STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0898

Jonathan G. Foss,
Respondent,

vs.

Mark Scott Savage,
Appellant,

Susan Foss, et al.,
Third Party Defendants.

Filed February 6, 2023
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27- CV-19-10716

Richard D. Snyder, Jeffrey W. Post, Ryan C. Young, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondent)

Samantha J. Ellingson, Aaron R. Thom, Thom Ellingson, PLLP, Minneapolis, Minnesota; and

Jonathan Uretsky (pro hac vice), PULLP, New York, New York (for appellant)

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

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges a judgment in excess of $6 million following a jury trial on the parties' competing contract-related claims. Appellant argues that the district court (1) erred by granting summary judgment dismissing appellant's fraud and civil-theft claims; (2) erred by granting judgment as a matter of law (JMOL) dismissing appellant's rescission and conversion claims; (3) erred by excluding evidence that certain transactions amounted to a "universal settlement" between the parties; and (4) abused its discretion by denying appellant's motion for a new trial. We affirm.

FACTS

Appellant Mark Savage provides financial consulting services to small private companies. He met respondent Jonathan Foss through a mutual acquaintance. Foss and his wife, third-party defendant Susan Foss, are minority owners of third-party defendant Foss Swim School.

During the spring of 2017, Savage approached Foss about investing in a series of reverse-merger transactions. In a reverse-merger transaction, a public "shell" company is purchased for the purpose of merging a private company into it. Doing so converts the private company into a publicly traded company. Savage sought investors like Foss to fund these transactions in exchange for obtaining shares of the public company's stock. Common shares acquired in a reverse-merger transaction must be held for a period of time—usually six months. But the private companies raising funds to enter a reverse-merger transaction can also award "consulting shares" to consultants like Savage as

compensation for finding investors like Foss. Unlike common shares, consulting shares are "free trading" in that they are not subject to a holding period. And, to incentivize investors, consultants can agree to split these consulting shares with investors as additional compensation for funding a reverse-merger transaction.

Over the next two years, Savage brought a number of reverse-merger investment opportunities to Foss's attention. Foss would then either purchase company shares directly,[1] loan funds to Savage to purchase shares on Foss's behalf, or a combination of the two. When an investment opportunity included the incentive of consulting shares, Savage advised Foss of the total funding required for a company to issue those shares to Savage, and Foss provided that funding to Savage on the condition that Savage agreed to split the consulting shares with him. When Foss loaned Savage funds to purchase shares of common stock, Savage agreed to sell those shares, with Foss's permission, once those shares were profitable. The proceeds from those sales were to be used first to repay Foss, plus interest, and then split between Foss and Savage, typically on either a 60-40 or 50-50 percentage basis.

At issue here are funds Foss loaned to Savage to acquire shares in six companies. The first three transactions involved Leafbuyers Technologies, Inc. (LBUY), Dala Petroleum Corp. (DALA or KTEL), and Telehealthcare, Inc. (TLLT or XSPT).[2] In each

[1] Foss purchased shares directly either under his own name or through one of his privately owned companies.

[2] The parties also refer to each of the six companies by their four-letter trading symbols, included herein for clarity.

instance, the parties memorialized the transaction through various documents, including promissory notes, stock assignments, stock pledge agreements, common-stock purchase agreements, and partnership agreements. The documents reflect that Foss invested a specific dollar amount in exchange for obtaining a certain number of shares in each public company (or warrants for future shares), including consulting shares.

By September 2017, Savage was in default because he had not fully repaid the funds Foss loaned him and had not provided Foss with the promised consulting shares. To address the situation, Foss and Savage entered into a Master Promissory Note (MPN) that consolidated the three transactions and memorialized a new payment agreement. The MPN required Savage to repay Foss for the funds loaned to him, and to pay Foss his share of any remaining proceeds from the sale of the stock. This included the consulting shares Savage promised to provide if Foss made certain contributions, though the MPN did not assign them a dollar value. Savage agreed to pay 8% interest on the amount owed (then $694,000) plus a late fee totaling 20% of the unpaid balance. At Savage's request, the parties extended the MPN twice. The final repayment deadline was March 31, 2018, and the amount due totaled $903,000.

The second group of transactions at issue here involved NDivision (NDVN), Driven Deliveries, Inc. (DRVD), and Quanta (QNTA). As to NDVN, the parties executed written agreements whereby Savage represented that, in return for certain payments, Foss would receive a specified number of shares, including consulting shares. Regarding QNTA, they entered into stock purchase agreements under which Savage sold Foss a total of 1,271,000 shares of his QNTA stock for $0.02 per share, for a total purchase price of $25,420.

Although Foss provided the full amount to Savage, Savage did not immediately provide Foss with the QNTA stock. With respect to DRVD, Savage sought a series of investments from Foss, and in exchange for one of these investments Foss directly received 1,533,000 warrants for shares of common stock. Pursuant to their written agreements, Foss agreed to split these shares with Savage when Savage fully compensated Foss for the amounts due on the other transactions, including the MPN. At the time of trial, Savage had not compensated Foss in full for these transactions, and Foss had not provided Savage with any DRVD stock warrants.

After Savage failed to timely pay the balance of the MPN or provide the agreed-upon shares as to the second group of transactions, Foss sued Savage for: (1) breach of contract (MPN, NDVN, stock assignment agreements, and stock purchase agreements); (2) securities fraud under Minn. Stat. §§ 80A.68, .69 (2022); (3) common-law fraud; (4) breach of fiduciary duty (as an agent and as a partner); (5) conversion; (6) unjust enrichment; and (7) civil theft under Minn. Stat. § 604.14 (2022). Foss also sought and obtained a temporary restraining order, which required Savage to account for shares he purchased and sold in LBUY, XSPT, KTEL and NDVN, and to place the sales proceeds into a dedicated account until the account balance reached $1,150,000.

Savage asserted counterclaims against Foss and third-party claims against Susan Foss and the Foss Swim School alleging: (1) entitlement to contract rescission; (2) fraudulent inducement; (3) breach of the covenant of good faith and fair dealing; (4) unjust enrichment; (5) promissory estoppel; (6) securities fraud under Minn. Stat.

§§ 80A.68, .69; (7) common-law fraud; (8) conversion; (9) civil theft under Minn. Stat. § 604.14; (10) breach of contract (MPN); and (11) breach of fiduciary duty as a partner.

The Foss parties moved for partial summary judgment seeking: (1) dismissal of Savage's third-party claims; (2) dismissal of all counterclaims against Foss; and (3) an award of QNTA stock to Foss. The district court granted the motion in part, dismissing Savage's third-party claims in their entirety[3] and his counterclaims for fraudulent inducement, securities fraud, common-law fraud, civil theft, and breach of the MPN. And the court awarded Foss the 1,271,000 shares of QNTA stock that Savage had in his possession.

The case proceeded to trial on the remaining claims in July 2021. About a month before trial, the district court ruled on several motions in limine. In relevant part, the court granted Foss's motion to preclude Savage's expert from testifying that Foss agreed to fully fund the reverse-merger transactions, the consequences of failing to do so, and that the simplest solution was to unwind all transactions. The district court also ruled that Savage could not present evidence that the DRVD transactions constituted a universal settlement of all claims between the parties because the "clear language of the written agreements" defeated such an argument.

At trial, Foss sought to recover (1) the amount due under the MPN; (2) the shares he was owed under the various contracts, including consulting shares; and (3) damages based on Savage's failure to timely turn over the QNTA stock. Foss testified that the

[3] Savage does not challenge dismissal of his third-party claims on appeal.

written documents—promissory notes, stock assignments, stock pledge agreements, common-stock purchase agreements, and partnership agreements—accurately represented the parties' agreements. His forensic accountant presented three written reports and testified that Foss sustained total losses (excluding the DRVD transaction) in the range of $8,571,587 - $8,846,787. The expert explained how he verified Foss's loans to Savage, traced Savage's purchases (or lack thereof) and sales of shares in each of the six companies, and how he calculated Foss's damages. He provided a detailed account of several instances in which Savage did not use Foss's loans to purchase the agreed-upon number of shares, instead using portions of the loans for Savage's personal expenses—wiring them to his significant other or to his attorney, for example—without informing Foss that he had not acquired the promised shares. And he testified that Savage sold shares without seeking permission from Foss and without splitting the proceeds with Foss, contrary to their written agreements.

Savage testified that he performed his duties under the contracts. And both he and his expert witness testified that it was impossible for Savage to owe consulting shares to Foss because they either did not exist or he did not receive them. Savage also stated he is entitled to the stock warrants Foss assigned to him under the DRVD agreements, testifying that the warrants belonged to him because he had satisfied his contractual duties under the MPN and the other transactions.

At the conclusion of the trial, the district court granted Foss's motion for JMOL on Savage's remaining counterclaims, including those seeking rescission of the MPN and for damages for conversion of the DRVD warrants.

The jury returned a verdict in Foss's favor. As to liability, the jury determined that Savage committed fraud; breached the MPN; breached the stock assignment agreements as to LBUY, NDVN, and KTEL; and breached the NDVN promissory note. The jury found that Savage did not prove it was impossible for him to provide consulting shares in LBUY, NDVN, and KTEL to Foss. It further determined that Foss did not breach the DRVD agreements by withholding the stock warrants. The jury awarded damages of $4,892,451 for fraud; $1,137,670 for breach of the MPN; $4,860,224 for failure to provide the consulting shares; and $156,950 for breach of the NDVN agreement. The jury did not award damages related to Savage's failure to timely turn over the QNTA stock. After deducting duplicative damage awards, the jury awarded Foss a total of $6,187,071.

Savage moved for a new trial, arguing that the damages were excessive, and that the district court abused its discretion with respect to certain evidentiary rulings and jury instructions. The district court denied Savage's motion.

Savage appeals, challenging the district court's grant of summary judgment on certain claims, grant of JMOL on others, and denial of his motion for a new trial.

DECISION

I. Foss was entitled to summary judgment dismissing Savage's counterclaims for fraud and civil theft.

A district court must grant a motion for summary judgment "if the movant shows that 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 party opposing summary judgment cannot rely on "mere averments." *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 172 (Minn.

2021) (quotation omitted). Rather, they must present "specific admissible facts giving rise to a factual question." *Bixler by Bixler v. J.C. Penney Co.*, 376 N.W.2d 209, 215 (Minn. 1985); *see also McIntosh Cnty. Bank v. Dorsey & Whitney, LLP*, 745 N.W.2d 538, 545 (Minn. 2008) (stating that a nonmoving party must present evidence that is "sufficiently probative" of an essential element of a claim that allows reasonable person to reach different conclusions about the facts in dispute (quotation omitted)); *Hopkins by LaFontaine v. Empire Fire & Marine Ins. Co.*, 474 N.W.2d 209, 212 (Minn. App. 1991) (stating evidence opposing summary judgment "must be such evidence as would be admissible at trial").

We review de novo "whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). In so doing, "[w]e view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

Fraud

To establish fraud, a party must plead, with specificity, that

> [1] there was a false representation regarding a past or present fact, [2] the fact was material and susceptible of knowledge, [3] the representer knew it was false or asserted it as his or her own knowledge without knowing whether it was true or false, [4] the representer intended to induce the claimant to act or justify the claimant in acting, [5] the claimant was induced to act or justified in acting in reliance on the representation, [6] the claimant suffered damages, and [7] the representation was the proximate cause of the damages.

Martens v. Minn. Min. & Mfg. Co., 616 N.W.2d 732, 747 (Minn. 2000); *see also* Minn. R. Civ. P. 9.02.

Savage alleged that Foss falsely represented that he would fully fund the reverse-merger transactions and that his failure to do so required Savage to find other investors who then received shares or warrants in the public companies that Savage would have otherwise obtained. Savage argues that he was entitled to have a jury decide this claim. We disagree. In opposing summary judgment, Savage relied only on his own conclusory averments—he presented no competent evidence to support them. *See Dyrdal v. Golden Nuggets, Inc*., 689 N.W.2d 779, 783 (Minn. 2004) (holding a party does not "establish genuine issues of material fact by relying upon unverified and conclusory allegations"). Instead, he cited—as he does on appeal—evidence that does not create a genuine fact issue. For example, Savage points to the KTEL partnership agreement, which states that "Foss will make his best efforts to finance all deals, through loans, personal funds and all reasonable options available to him." But he identifies no evidence to indicate that Foss—at the time he entered into the agreement—did not intend to "make his best efforts" or that he failed to do just that. And to the extent Foss's representation concerned a future event, it cannot support a fraud claim. *See Vandeputte v. Soderholm*, 216 N.W.2d 144, 147 (Minn. 1974) (stating the "well-settled rule that a representation . . . as to future acts is not a sufficient basis to support an action for fraud merely because the represented act or event did not take place").

Absent competent evidence to support his bald allegations, Savage did not defeat summary judgment and his fraud counterclaim was properly dismissed.

Civil Theft

"A person who steals personal property from another is civilly liable to the owner for its value when stolen . . . ." Minn. Stat. § 604.14, subd. 1. We have defined "steals" to mean "a person wrongfully and surreptitiously tak[ing] another person's property for the purpose of keeping it or using it." *TCI Bus. Cap., Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 431 (Minn. App. 2017). Included in this definition is the requirement of "some initial wrongful act in taking possession of the property." *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115, 126 (Minn. App. 2017), *aff'd*, 913 N.W.2d 687 (Minn. 2018).

Savage alleges that Foss stole half of the DRVD warrants because Foss is withholding them from him. As in the district court, Savage identifies no evidence on appeal that Foss wrongfully took possession of the warrants. Rather, he cites the district court's summary-judgment order, which states that "there is evidence that Foss is holding certain DRVD warrants or shares belonging to Savage." Savage argues this language evinces a genuine fact issue as to Foss's wrongful use and possession of the DRVD warrants. We are not persuaded.

Savage's argument fails to acknowledge that even if Foss currently possesses the DRVD warrants, this is not evidence that Foss "wrongfully and surreptitiously" took them in the first place. And the evidence Savage does cite, the "Warrant/Stock Pledge Agreement," reveals the opposite. It contemplates Foss rightfully holding the warrants at

the time he assigned them to Savage: "pursuant to an Assignment of Stock agreement between [Savage] and [Foss], [Foss] has acquired 1,533,000 warrants for shares of common stock . . . of DRVD."

Because Savage presented no competent evidence—especially evidence of some "initial wrongful act"—to support his civil-theft claim, we see no error in its dismissal by summary judgment.

II. The district court did not err by granting JMOL dismissing Savage's counterclaims for rescission and conversion.

We review de novo a district court's decision whether to grant or deny JMOL. *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 n.5 (Minn. 2018); *see also Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 54-55 (Minn. 2019). In doing so, we view the evidence in the light most favorable to the nonmoving party and independently determine "whether there is sufficient evidence to present an issue of fact for the jury." *Jerry's Enters., Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 816 (Minn. 2006).

Rescission

Rescission of a contract is an equitable remedy. *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 861 (Minn. 2011) (citing *Nadeau v. County of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979)). It "is the unmaking of a contract . . . which not only terminates the contract but abrogates it and undoes it from the beginning." *Johnny's, Inc. v. Njaka*, 450 N.W.2d 166, 168 (Minn. App. 1990). Generally, a court may rescind a contract when both parties were mistaken as to its terms or as to facts material to the agreement. *Id*. To support rescission, a mistake must be mutual—

"reciprocal and common to both parties." *Carpenter v. Vreeman*, 409 N.W.2d 258, 261 (Minn. App. 1987). But even a mutual mistake does not warrant rescission if the "means of information are open alike to both [parties] and there is no concealment of facts or imposition." *SCI*, 795 N.W.2d at 862 (quotation omitted).

Savage sought to rescind the MPN because the parties were mistaken as to Foss's intention to "fully fund" each of the underlying reverse-merger transactions. He cites purported discrepancies between the parties regarding expected funding amounts and consulting shares as material fact questions the jury should have decided. We disagree for two reasons. First, Savage did not present evidence that Foss concealed facts or other information. And Savage did not present evidence that the means of information were unavailable to him—indeed, he was the one who presented and coordinated the transactions at issue. Second, Savage ratified the MPN by making payments to Foss under it and extending it twice. A party who may otherwise have grounds to rescind a contract may not do so if they ratified it by accepting and retaining its benefits. *Proulx v. Hirsch Bros. Inc*., 155 N.W.2d 907, 912 (Minn. 1968).

Finally, we see no error in the district court's conclusion that "equity is not served by unwinding the transactions between Foss and Savage through rescission. In the event of rescission, Foss would only receive a return of his contributions plus interest while Savage would enjoy all the stock purchased with Foss's funds."

Conversion

A person commits the conversion tort when they "willfully interfere[] with the personal property of another without lawful justification, depriving the lawful possessor of

use and possession." *Staffing Specifix*, 896 N.W.2d at 125 (quoting *Williamson v. Prasciunas*, 661 N.W.2d 645, 649 (Minn. App. 2003)). But a tort remedy is generally not available when the damages flow from a legal duty imposed by a contract. *Id.* at 125. Under what is known as the independent-duty rule, a tort claim is available only "in exceptional cases where the defendant's breach of contract constitutes or is accompanied by an independent tort." *Id*. (quoting *Wild v. Rarig*, 234 N.W.2d 775, 789 (Minn. 1975)).

Savage argues that Foss's retention of half of the DRVD stock warrants at the time of trial constitutes conversion. But Savage's entitlement to recover damages for this claimed deprivation is grounded in the parties' contract. He does not allege that Foss owed him a duty outside of those imposed by the contract.[4] Accordingly, the district court did not err by granting JMOL on the conversion claim.

III. The district court did not abuse its discretion by excluding evidence of a purported universal settlement of claims between the parties.

A district court has broad discretion when ruling on the admission of evidence, and "its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). The complaining party must demonstrate prejudicial error. *Id.*

Savage argues that the district court erred by granting Foss's pretrial motion to exclude evidence that the DRVD transactions settled all of Foss's claims. Savage asserts

[4] Furthermore, as the district court noted, the parties' written agreements support Foss's contention that he only owed half of the DRVD warrants to Savage once Savage fulfilled his contractual obligations to Foss under all preexisting assignment, loan, and stock transfer agreements, which Savage did not do.

that this ruling was akin to a summary-judgment order and that he was denied an opportunity to address this issue due to a lack of notice. We disagree. Foss served his motion about one month before the hearing. Savage presented no evidence and made no offer of proof at the hearing to show a universal settlement. Even now, Savage does not identify any supporting evidence he would have submitted if permitted to do so. Indeed, the record supports the opposite conclusion: the contract assigning the DRVD warrants expressly states, "These assignments are in addition and completely separate from previous assignments in 2017 between Mark Scott Savage and Jonathan George Foss and and [sic] 2018 assignments between Mark Savage and Lane 8 LLC [Foss's company] from nDivision, Konatel KTEL, Leafbuyer LBUY, Sport XSPT." The district court's exclusion of evidence regarding a purported universal settlement is neither legally erroneous nor an abuse of the court's broad discretion.

IV. The district court did not abuse its discretion by denying a new trial.

Savage contends that he is entitled to a new trial because the district court improperly instructed the jury and the jury awarded excessive damages. We address each argument in turn.

Jury Instruction

"The district court has broad discretion in determining jury instructions and we will not reverse in the absence of abuse of discretion." *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002). Furthermore, "[d]istrict courts are allowed considerable latitude in selecting language used in the jury charge and determining the propriety of a specific instruction." *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 159 (Minn. 2002).

Regarding Foss's direct investments,[5] the district court instructed the jury as follows: "If you find that Jonathan Foss realized gains on personal investments, either by himself or through one of his limited liability companies, do not offset these gains from any amount you determine that Jonathan Foss is owed from Mark Savage under the written agreements."

Savage contends this instruction is erroneous because it prevented the jury from considering "whether Savage satisfied his obligations to Foss through the value Foss received in [DRVD] shares." The record defeats this contention. And the special verdict form demonstrates that the jury *did* consider whether Savage satisfied his obligations to Foss. In it, the jury was asked that precise question: "Did Jonathan Foss and Mark Savage reach an agreement to satisfy the contractual duties owed by Mark Savage to Jonathan Foss?" Its answer: "No."

Because of the broad discretion and considerable latitude district courts are afforded in determining jury instructions, and because Savage's argument is contrary to the evidence, we conclude that the district court did not abuse its discretion by denying a new trial based on the jury instruction.

Damages

A jury may not base its award on speculation or conjecture. *Busch v. Busch Constr., Inc.*, 262 N.W.2d 377, 399 (Minn. 1977). But as long as there is proof of a reasonable

[5] In addition to his investment agreements with Savage, Foss "directly invested" in companies (such as LBUY) by providing funding for their reverse-merger transactions himself rather than loaning Savage the funds to act on Foss's behalf.

basis to approximate the jury's award, "the difficulty of proving its amount will not preclude recovery." *Polaris Indus. v. Plastics, Inc.*, 299 N.W.2d 414, 419 (Minn. 1980). A new trial is warranted only if "the verdict is so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence, or acted under some mistake." *Clifford v. Geritom Med. Inc.*, 681 N.W.2d 680, 687 (Minn. 2004) (quotation omitted). Whether to grant a new trial based on excessive damages is within the district court's discretion and will be overturned only when that discretion is abused. *Advanced Training Sys., Inc. v. Caswell Equip. Co.*, 352 N.W.2d 1, 11 (Minn. 1984).

Savage's excessive-damages argument relates only to the consulting shares that he avers do not exist. He argues that the jury awarded Foss excessive damages because "there was no evidence the consulting shares were issued or . . . whether they would exist at any point in the future." This argument is unavailing. In denying the new-trial motion, the district court noted that "Savage admitted that the [consulting] shares existed" and that he claimed without evidence that he "either did not receive them or did not provide them to Foss because Foss failed to 'fully fund' the transactions." And the district court pointed out that Savage did not provide consulting shares to Foss even where it was undisputed that Foss made the investments specified in the contracts. The evidence supports the district court's determination: Savage repeatedly represented in the parties' written agreements that he possessed consulting shares and had assigned a specific percentage of them to Foss as compensation for his investments.

Foss's expert forensic accountant explained how he determined the total losses caused by Savage's actions. He analyzed the parties' agreements and transactions

regarding each of the six companies. His calculations included the share sales that Savage had not disclosed to Foss, the proceeds he did not split with Foss, and the shares he withheld from Foss in violation of their agreements. Based on current share pricing, he calculated total losses to be $8,571,587 - $8,846,787. Of that amount, $2,732,650 was attributed to Savage's untimely transfer of the QNTA shares. The jury awarded Foss $6,187,071 in damages. This award was in accordance with Foss's expert's estimates on all but the QNTA shares—suggesting neither speculation nor conjecture, as Savage asserts, but that the jury found Foss's expert credible.

Because the evidence supports the jury's award of damages, we discern no abuse of discretion by the district court in denying a new trial.[6]

Affirmed.

[6] Savage argues that the district court's cumulative evidentiary errors "improperly whittled away at Savage's defenses to such an extent that he could no longer present his case at all." But he cites no authority for this court to extend the cumulative-error doctrine available in criminal cases to civil cases. We decline to do so.