STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0932

Ronald Hagle, et al.,
Appellants,

vs.

Erickson, Bell, Beckman & Quinn, P.A., et al.,
Respondents.

Filed February 6, 2023
Affirmed in part, reversed in part, and remanded
Larkin, Judge

Chisago County District Court
File No. 13-CV-18-489

Bradley Kirscher, Kirscher Law Firm, P.A., Roseville, Minnesota (for appellants)

Mark R. Bradford, Bassford Remele, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this post-remand appeal, appellants challenge the district court's determination of the amount of an attorney lien owed to respondents. We affirm in part, reverse in part, and remand.

FACTS

This appeal stems from a dispute over legal services provided by respondents Erickson, Bell, Beckman & Quinn, P.A., et al. (the firm) to appellants Ronald Hagle, et al.

(the Hagles) in an action against The Bank of New York Mellon (BNYM) and others for "wrongful eviction."[1] In 2012, the Hagles commenced the wrongful-eviction action alleging that BNYM and its agents wrongfully retained possession of their personal property after an eviction.

In November 2016, the Hagles hired James C. Erickson Sr. (Erickson Sr.) to represent them at a December 2016 mediation in the wrongful-eviction action. BNYM offered to settle the case, but the Hagles rejected the offer. Erickson Sr. informed the Hagles that they needed to execute a new agreement for further representation.

On January 14, 2017, the Hagles signed a post-mediation retainer agreement, which provided that the firm would represent them through trial in the wrongful-eviction action and that the firm would be paid one-third "of the amount recovered plus costs and disbursements." Under the retainer agreement, any settlement required the Hagles' consent. But the firm was permitted to withdraw if it believed there was no viable claim or that the Hagles were rejecting a reasonable settlement offer, in which case, there would be no attorney's fees.

On June 6, 2017, the parties in the wrongful-eviction action participated in a second mediation. BNYM again offered to settle, and the Hagles again rejected the offer. The Hagles then wrote directly to the mediator saying that they would not accept the mediator's suggested settlement amount. After learning that the Hagles had contacted the mediator,

[1] We use the description "wrongful eviction" consistent with this court's earlier opinion in this case. *Hagle v. Erickson, Bell, Beckman & Quinn, P.A.*, No. A19-1392, 2020 WL 3638784, at *1 (Minn. App. July 6, 2020).

Erickson Sr. emailed them, stating, "it seems you have fired me." The Hagles responded: "We absolutely want you to continue as our attorney." The firm agreed to continue representation.

On August 7, 2017, the scheduled trial date in the wrongful-eviction action, the Hagles and BNYM entered into a settlement agreement, which released certain parties. At the district court's request, the parties reduced the agreement to a one-page, hand-written document. The parties also put their agreement on the record.

The very next day, the Hagles expressed a desire to exclude Bank of America (BOA), BNYM's mortgage servicer, from the release contained in the settlement agreement. The Hagles sent the firm an email stating, "we will not sign the [formal] settlement papers until . . . [i]t is completely clear we are not releasing [BOA]." The Hagles further stated that the firm was not entitled to the agreed-upon contingency fee because the Hagles' friend and attorney,[2] Ben Houge, "ha[d] done at least 80% of the work." In a letter dated the same day, the firm wrote the Hagles that they had "repeatedly" discussed that the defendants in the wrongful-eviction action were "entitled to a general release" and that BNYM's proposed release language was "appropriate and common."

On August 22, 2017, the Hagles, without consulting the firm, wrote directly to BNYM's counsel, repudiating the settlement agreement. The firm thereafter informed the Hagles that their refusal to honor the settlement agreement created a conflict of interest that

[2] In 2009, Houge was indefinitely suspended from the practice of law in Minnesota for misconduct.

required the firm to withdraw from representation. The firm formally withdrew as the Hagles' counsel on September 18, 2017.

Also on August 22, James Erickson Jr. (Erickson Jr.) wrote an email to an attorney representing the firm stating that he had spoken with BNYM's attorney, who was "looking at two options: filing a motion to compel this settlement or asking the judge to set aside and demanding an immediate trial date." The email also stated, "I think he sees a path to zero out [the Hagles] with the latter option and seems to favor that . . . [and] that is more problematic to our interests."

The Hagles moved to set aside the settlement in the wrongful-eviction action, and BNYM moved to enforce it. On January 24, 2018, the district court ordered that "[t]he handwritten settlement agreement executed by the parties on August 7, 2017[,] is a binding and enforceable agreement."

After the district court issued its order enforcing the settlement agreement, the firm moved to establish an attorney lien on the settlement proceeds in the wrongful-eviction action. The Hagles opposed that motion, arguing that under the terms of the retainer agreement, the firm had forfeited their fee by withdrawing. The district court rejected the Hagles' argument. It determined that the firm was forced to withdraw because of the Hagles' actions *after* the parties had reached a full settlement and that the firm was entitled to compensation under the terms of the retainer agreement. On August 6, 2018, the district court granted the firm's motion to establish an attorney lien. However, the district court expressly disclaimed a determination of the amount of attorney's fees owed, noting that

the amount owed by the Hagles "is subject to litigation and determination in a separate action."

The "separate action" to which the district court referred is the underlying suit in this appeal, which the Hagles commenced against the firm in March 2018. In this action, the Hagles sought damages and declaratory judgment. The Hagles acknowledged their retainer agreement with the firm, but they asserted that they had advised the firm that they only wanted to release the parties named in the underlying case and that the release of additional parties, such as BOA, was therefore against their wishes. The Hagles asserted that the firm's inclusion of BOA in the settlement agreement and failure to follow their wishes constituted "a breach of their duties as attorneys." The Hagles also asserted that the firm's actions constituted a breach of contract, a violation of certain statutory provisions, professional negligence, and a "forfeiture of any fee owed" to the firm.

The Hagles moved for partial summary judgment. The firm also moved for summary judgment. On the cross-motions for summary judgment, the district court dismissed the Hagles' claims for breach of fiduciary duty, breach of contract, violation of certain statutory provisions, and professional negligence. As to the Hagles' fee-forfeiture claim, the district court concluded that the attorney-lien judgment in the wrongful-eviction action had res judicata effect. The district court noted that the order of August 6, 2018, establishing an attorney lien "specifically addressed whether [the firm's] withdrawal as counsel for [the Hagles] precluded any attorney fee resulting from the settlement recovery" in the wrongful-eviction action "as well as whether [the firm's] withdrawal precluded an attorney lien on [the Hagles'] recovery."

The Hagles appealed the dismissal of their claims. This court affirmed in part, reversed in part, and remanded. *Hagle*, 2020 WL 3638784, at *1. This court concluded that the district court properly dismissed the Hagles' malpractice and purported statutory claims. *Id.* at *8, 11. However, this court also concluded that the district court erred by applying res judicata to the Hagles' fee-forfeiture claim because the amount necessary to satisfy the attorney lien had not been decided. *Id.* at *9-11. Thus, the district court's ruling in the wrongful-eviction action did not have a "preclusive effect." *Id.* at *11.

On remand, the Hagles requested a jury trial on their fee-forfeiture claim, arguing that the claim was legal, and not equitable, because it was based on an underlying contract issue. The district court concluded that the only claim remaining on remand was whether the firm's withdrawal from representation breached its fiduciary duty and therefore resulted in forfeiture of attorney's fees. The district court reasoned that such a claim sounded in equity and therefore denied the Hagles' request for a jury trial.

Following a court trial, the district court dismissed the Hagles' fee-forfeiture claim with prejudice. The district court concluded that the firm's withdrawal from representation was for "good cause" and that the firm did not breach its fiduciary duty. The district court found that the withdrawal occurred "after the case was resolved and the essential work [was] done."

The Hagles moved for a new trial or amended findings and conclusions of law. As to the conclusions of law, the Hagles asserted that the district court erred by failing to address application of the doctrine of quantum meruit. The district court denied the Hagles' motion for a new trial or amended findings, but it granted in part the Hagles' motion for

amended conclusions of law. The district court indicated that it was unsure whether a quantum-meruit analysis was necessary, but it nonetheless concluded that the firm was entitled to recover on the attorney lien under that theory.

The Hagles appeal.

DECISION

I.

The Hagles contend that the district court erred by denying them "an opportunity to try their contract-based claims to a jury." Specifically, they argue that this court's decision in the first appeal "reversed the district court's dismissal of [their] contract-based claims" and that they were "entitled to try their contract-based claims to a jury." By "contract-based claims," the Hagles mean their claim that the firm forfeited fees under the terms of the retainer agreement. The Hagles assert that because they "requested a declaration of the parties' rights under the contingent fee contract, they were entitled to a jury trial."

The Minnesota Constitution secures the right to a jury only for "cases at law." Minn. Const. art I, § 4. No right to a jury trial attaches to actions in equity. *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 615 (Minn. 2007); *United Prairie Bank-Mountain Lake v. Haugen Nutrition & Equip., LLC*, 813 N.W.2d 49, 54 (Minn. 2012). In evaluating whether a claim is legal or equitable, courts evaluate the substance of the claim and "the nature of the relief sought." *Abraham v. County of Hennepin*, 639 N.W.2d 342, 353 (Minn. 2002). Whether a party has a right to a jury for a particular cause of action is a legal question that this court reviews de novo. *Schmitz v. U.S. Steel Corp.*, 831 N.W.2d 656, 674 (Minn. App. 2013), *aff'd*, 852 N.W.2d 669 (Minn. 2014).

The Hagles' complaint in the underlying action asserted that the firm's attorneys breached "their duties as attorneys." The Hagles also asserted that under the terms of the retainer agreement, the firm's withdrawal resulted in forfeiture of any fee owed to them. "[A]ctions for the breach of a fiduciary duty generally sound in equity." *R.E.R. v. J.G.*, 552 N.W.2d 27, 30 (Minn. App. 1996). A claim seeking recovery of attorney's fees based on a contract is generally legal in nature. *See United Prairie Bank-Mountain Lake*, 813 N.W.2d at 60. Thus, the Hagles' complaint raised both equitable and legal claims.

The Hagles argue that "[r]esolution of the parties' dispute regarding entitlement to a jury trial depends on the interpretation of this court's opinion" in the first appeal. We agree. The Hagles also argue that the district court misinterpreted this court's decision in the first appeal as limiting their remaining claims to those based on breach of fiduciary duty. For the reasons that follow, we disagree.

In their request for a jury trial on remand, the Hagles relied on language in the retainer agreement. Specifically, the Hagles relied on language providing that the firm could withdraw if the Hagles rejected a reasonable settlement offer, but if that happened, there would be no attorney's fees. The Hagles made the same argument in opposition to the firm's request for an attorney lien in the wrongful-eviction action, and the district court rejected the argument as being "without merit." In doing so, the district court determined that the firm was "forced to withdraw because of [the Hagles'] actions after a full settlement was reached," that a "valid attorney fee contract existed" between the Hagles and the firm, and that Erickson Sr. was "entitled to recover a fee under the terms of the [r]etainer

[a]greement." However, the district court declined to determine the amount owed under the retainer agreement because that issue was subject to litigation in the underlying action.

Thus, in the Hagles' first appeal of this matter, this court described the proceedings in district court as follows:

> After the district court issued its order enforcing the settlement agreement, [the firm] moved to establish an attorney lien on the settlement proceeds in the [wrongful-eviction action]. [The Hagles] opposed that motion, arguing that [the firm] forfeited [its] fee by withdrawing. The district court rejected [the Hagles'] argument. It determined that [the firm was] "forced to withdraw because of [the Hagles'] actions after a full settlement was reached" and that [the firm was] *entitled to compensation under the terms of the post-mediation retainer agreement.*

Hagle, 2020 WL 3638784, at *3 (emphasis added). This court concluded that the district court erred by applying res judicata to the Hagles' claim for fee forfeiture because:

> The record indicates that the district court's order in the action to establish an attorney lien resolved only *whether* [the firm was] *entitled to establish an attorney lien on the settlement proceeds. They were so entitled.* But the district court in that action expressly disclaimed resolving "the amount of attorney's fees [that will] satisfy that lien." Therefore, . . . the amount of attorney fees to which [the firm is] entitled was withheld from consideration of the court . . . and is not adjudicated. *We conclude that the district court's order is not a bar to further proceedings on the question not decided. There was no final judgment on the merits in the earlier proceeding concerning the amount of fees to which* [the firm is] entitled.

Id. at *10 (emphasis added) (quotation and citation omitted).

"The doctrine of law of the case is a rule of practice followed between the Minnesota appellate courts and the lower courts." *Loo v. Loo*, 520 N.W.2d 740, 744 n.1 (Minn. 1994).

"It is a discretionary doctrine developed by the appellate courts to effectuate the finality of appellate decisions." *Id.* "It ordinarily applies where an appellate court has ruled on a legal issue and has remanded the case to the lower court for further proceedings." *Id.* "Under the law-of-the-case doctrine, the holdings of an appellate court on questions presented to it in reviewing proceedings of the [district] court become the law of the case, and those holdings conclusively settle, for purposes of that litigation, all matters ruled upon, either expressly or by necessary implication." 5 C.J.S. *Appeal & Error* § 1008 (2019). This court's determinations that an attorney lien had been established, that the firm was "entitled" to that lien, and that the only remaining issue was the amount of attorney's fees owed is the law of the case. Thus, the only remaining issue on remand was the amount of the attorney lien.

The district court's award of an attorney lien was based on the retainer agreement, which provided that the firm would be paid one-third "of the amount recovered plus costs and disbursements." In granting the attorney lien, the district court rejected the Hagles' argument that the firm had forfeited its entitlement to attorney's fees under the terms of the retainer agreement. That determination was not reversed on appeal. Thus, the only fee-forfeiture theory remaining on remand was the Hagles' claim that the firm forfeited its fees by breaching its fiduciary duty, which is an equitable claim. *See R.E.R.*, 552 N.W.2d at 30. Because it is an equitable claim, the Hagles were not entitled to a jury trial, and the district court did not err by refusing to grant one.[3]

[3] The Hagles argue that the district court effectively considered a collateral-estoppel argument, despite that defense not being pleaded. *See Barth v. Stenwick*, 761 N.W.2d 502,

II.

The Hagles contend that the district court erred in concluding that the firm was entitled to "the contract-based contingent fee" under an alternative theory of quantum meruit. They argue that the district court "failed to consider the factors required for an award of quantum meruit fees."

In their posttrial motion, the Hagles argued that "[t]here are two avenues available to an attorney to prove entitlement to fees—a claim for fees based on contract and a claim for fees based on quantum meruit." The Hagles asserted that the district court had to consider the doctrine of quantum meruit because the district court determined that the firm withdrew for good cause and, according to the Hagles, "[a] contingent-fee attorney who withdraws for good cause can only recover quantum meruit fees."

The district court questioned whether it was necessary to consider a fee recovery based on quantum meruit because both the district court and this court had determined that the firm was entitled to an attorney lien under the terms of the retainer agreement, i.e., a contract. "When a valid attorney-fee contract exists between a client and an attorney and the attorney completes the work under the contract's terms and achieves a settlement or recovery, the attorney is entitled to recover a fee under those terms." *In re Caswell*, 905

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507 (Minn. App. 2009) ("Collateral estoppel, also known as issue preclusion, prohibits a party from relitigating issues that have been previously adjudicated."). We disagree. The district court's proceedings on remand were consistent with this court's decision on appeal and reflect adherence to the law of the case. The district court did not mention or apply the doctrine of collateral estoppel.

N.W.2d 507, 512 (Minn. App. 2017). Nonetheless, the district court analyzed the quantum-meruit issue as requested by the Hagles.

The district court determined that the firm was entitled to an attorney lien based on the terms of the retainer agreement, and this court stated that the firm was "so entitled." *Hagle*, 2020 WL 3638784, at *10. "Quantum meruit is restitution for the value of a benefit conferred in the *absence of a contract* under a theory of unjust enrichment." *Faricy L. Firm, P.A. v. API, Inc. Asbestos Settlement Tr.*, 912 N.W.2d 652, 657-58 (Minn. 2018) (emphasis added) (quotation omitted). Because the fees in this case are recoverable under the retainer agreement, which is a contract, any alleged error in the district court's analysis of quantum meruit as an alternate theory of recovery is harmless and must be ignored. *See* Minn. R. Civ. P. 61 (requiring courts to ignore harmless error).

On appeal, the Hagles rely on *In re Petition for Distribution of Attorney's Fees between Stowman Law Firm, P.A., and Lori Peterson Law Firm*. 870 N.W.2d 755 (Minn. 2015). *Stowman* announced the rule that an attorney who "withdraws for good cause from representation under a contingent-fee agreement may recover in quantum meruit the reasonable value of the services rendered prior to withdrawal, provided that the recovery upon withdrawal is not otherwise addressed in the agreement and the attorney satisfies the ethical obligations governing withdrawal from representation." *Id*. at 756. In determining whether the Stowman firm was entitled to fees, the Minnesota Supreme Court stated that certain factors weighed "heavily in favor of allowing an attorney *who terminates the relationship for good cause before resolution of the claim* to recover the reasonable value of services rendered if the client ultimately recovers in the case." *Id*. at 763 (emphasis

added). But the supreme court ultimately concluded that the Stowman firm was not entitled to any fees because "refusal of a client to accept a settlement offer in a civil case does not constitute good cause to withdraw." *Id*. at 766.

In sum, the *Stowman* rule was announced in the context of an attorney who terminated the relationship without good cause before resolution of the claim. Those are not the circumstances here. The firm represented the Hagles through settlement of their claims and then withdrew for good cause. Given the circumstances of the withdrawal in this case, *Stowman* is not on point.[4]

III.

The Hagles contend that the district court applied an incorrect legal standard to their claim for breach of fiduciary duty. Specifically, the Hagles argue that the district court erroneously assigned them the burden of proof on that claim. We review de novo whether a district court applied the correct legal standard. *See Berthiaume v. Allianz Life Ins. Co. of N. Am.*, 946 N.W.2d 423, 426 (Minn. App. 2020) ("[T]he issue of determining the standard that the district court should apply to a disqualification motion presents a legal question that we review de novo."), *rev. dismissed* (Minn. Sept. 3, 2020).

In its order, the district court stated that a breach-of-fiduciary-duty claim against an attorney has the same elements as a legal malpractice claim and requires the "plaintiff to prove" the following: "(1) the existence of an attorney client relationship; (2) acts

[4] The second case that the Hagles cite, *Faricy*, is also not on point. 912 N.W.2d 652. That case clarified "the proper method for calculating the quantum meruit value of an attorney's services when a client terminates the contingent-fee agreement *before* a matter concludes." *Id*. at 654 (emphasis added) (footnote omitted).

constituting negligence or breach of contract; (3) that such acts were the proximate cause of the plaintiff's damages; and (4) that but for defendant's conduct, the plaintiff would have been successful in the prosecution or defense of the action." As support, the district court cited *Mittelstaedt v. Henney*, 954 N.W.2d 852, 860 (Minn. App. 2021), *rev'd*, 969 N.W.2d 634 (Minn. 2022).

In *Mittelstaedt*, this court concluded that Minn. Stat. § 544.42 (2018), which sets forth certain expert-affidavit requirements for actions alleging professional "negligence or malpractice," applied to the breach-of-fiduciary-duty claim at issue. 954 N.W.2d at 862-63. In doing so, this court rejected the proposition that, "once the plaintiff establishes that a fiduciary relationship is established, the burden shifts to the fiduciary . . . to show that the transaction was inherently fair." *Id*. at 861.

As noted by the Hagles, the Minnesota Supreme Court reversed this court's decision in *Mittelstaedt* and held that this court should not have created a blanket requirement for expert affidavits in cases involving legal-malpractice claims. 969 N.W.2d at 640-41. The supreme court went on to identify the elements of a legal malpractice breach-of-fiduciary-duty claim as follows: "(1) the existence of an attorney-client relationship, which establishes a standard of conduct, i.e., the duty; (2) a breach by the attorney of one or more of the fundamental obligations owed to the client under that standard of conduct; (3) causation; and (4) damages." *Id.* at 640; *see Hansen v. U.S. Bank Nat'l Assoc.*, 934 N.W.2d 319, 327 (Minn. 2019) ("A breach of fiduciary duty claim consists of four elements: duty, breach, causation, and damages.").

As to the assertion of error in this case, a footnote in the supreme court's *Mittelstaedt* opinion cites *Colstad v. Levine*, 67 N.W.2d 648 (Minn. 1954) and states:

> In *Colstad*, we held that the "strict rules of fiduciary conduct cast upon the *attorney* the burden of proving that he has been absolutely frank and fair with his client and has taken no advantage of the confidence arising from such professional relation." 67 N.W.2d at 654 (emphasis added). *Colstad* remains good law and is consistent with this opinion. Requiring plaintiffs to produce affidavits at the outset of litigation to show a prima facie case neither changes nor contradicts *the attorneys' ultimate burden to prove that they discharged their duties appropriately*. *See* Minn. Stat. § 544.42, subd. 2(1)-(2).

969 N.W.2d at 641 n.3 (emphasis added). The Hagles cite this footnote and argue that the district court improperly assigned them the burden of proof, as shown by its statement that they had "to prove" the elements of their breach-of-fiduciary-duty claim. The Hagles also nominally assert that the district court applied the incorrect "elements" to their claim, but they fail to specify the nature of that error.

"An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). We discern no obvious prejudicial error stemming from the district court's identification of the elements of the Hagles' breach-of-fiduciary-duty claim. However, the district court's statement that the Hagles had to prove each element of that claim indicates error under *Colstad*.

At oral argument to this court, the Hagles asked the panel to remand for the district court to reconsider its rejection of the Hagles' breach-of-fiduciary-duty claim, while

allocating the burden of proof to the firm. The Hagles noted that the district court need not "retry this case" and that it should simply "reassess" its decision, using a correct allocation of the burden of proof.

This court does not find facts or reweigh the evidence on appeal. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Thus, a determination whether the record sustains a finding that the *firm* proved that it discharged its duties to the Hagles must be made by the district court. Although the district court's order is very thorough and suggests that its statement regarding the burden of proof may ultimately prove to be harmless, given the nature of the error, a remand is appropriate. We therefore reverse and remand for the district court to reconsider its rejection of the Hagles' breach-of-fiduciary-duty claim, as it was presented to the district court, with the burden of proof allocated to the firm. The district court need not reopen the evidentiary record, and it has discretion to limit the arguments on remand—if any—to those deemed helpful to the district court.

In conclusion, we affirm the district court's denial of a jury trial on the Hagles' breach-of-fiduciary-duty claim. And we reject as harmless any alleged error in the district court's analysis of quantum meruit as an alternate theory of recovery. But we reverse and remand the district court's decision on the merits of the Hagles' breach-of-fiduciary-duty claim for reconsideration using the correct allocation of the burden of proof.

Affirmed in part, reversed in part, and remanded.