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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0995**

Elliott Sirota, et al.,
Respondents,

vs.

Villas of St. Albans Bay Association,
Appellant.

**Filed March 27, 2023
Affirmed in part, reversed in part, and remanded
Jesson, Judge**

Hennepin County District Court
File No. 27-CV-21-96

Elliott Sirota, Judith M. Sirota, Estero, Florida (pro se respondents)

Todd R. Iliff, Todd R. Iliff, P.A., Edina, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and
Frisch, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

A tree in a common-interest community grew to partially obstruct respondents Elliott and Judith Sirota's (the Sirotas) view of Lake Minnetonka. As a result, litigation ensued between the Sirotas and appellant Villas of St. Albans Bay Association (Villas), which maintains the tree. The district court concluded that Villas did not breach any covenants or duties to its common-interest-community members, but that the tree was a

private nuisance that needed to be cut down. On appeal, Villas asserts that, because it did not breach any covenants or duties to its members, this conclusion is legally inconsistent. In addition, Villas appeals the district court's vacation of fines that Villas levied against the Sirotas for violating its Good Neighbor Policy. In a related appeal, the Sirotas assert that the entire Good Neighbor Policy is invalid, and Villas breached its covenants and duties to them as members of the common-interest community.

Because the record supports the district court's findings that Villas breached neither the covenants in its governing documents nor breached the duties owed to its members, we affirm as to these two issues. We also agree with the district court's determination that, although Villas's Good Neighbor Policy was properly enacted under its bylaws, the fines were improperly levied against the Sirotas under that policy because Villas did not provide sufficient notice to the Sirotas of their specific violations. As a result, we affirm on those two issues as well. But because Villas was compliant with all its governing documents in its maintenance of the tree, and thus did not act wrongfully—as the district court properly determined—we reverse the court's finding that the tree was a private nuisance. Accordingly, we affirm in part, reverse in part, and remand to the district court to determine the narrow issue of attorney fees as it relates to Villas.

FACTS¹

Villas maintains a common-interest community of 20 condominium units in Greenwood that overlook Lake Minnetonka. Each owner of a unit is a member of Villas. The Sirotas are owners of one of the units and have been members of Villas since 2000. When the Sirotas purchased a unit at Villas, they paid a premium to be on the lake and, at the time, had an unobstructed view of the lake. During construction, three river birch trees were planted behind the condominium—between the lake and the units—in what Villas calls its rain gardens. One tree was planted in a rain garden that the Sirotas’ unit overlooks. Over time, this tree grew to partially obstruct the Sirotas’ view of the lake.

As a common-interest community, Villas and the common elements in its community, such as the rain gardens and the trees, are governed by the Minnesota Common Interest Ownership Act—Minnesota Statutes sections 515B.1-101 to 515B.4-118 (2022)—and its governing documents, such as its amended declaration for the condominium (the declaration), bylaws, and rules and regulations. The declaration includes Villas-specific covenants and is signed by the members upon the purchase of a unit. One of the covenants in the declaration, 12.03, states that Villas “shall maintain any rain garden areas upon the Property as located and shown on the [final plans] and the Plat,” and 12.01 grants Villas “the exclusive right to manage, maintain and alter the common elements,” such as the rain gardens and trees. The final plans mentioned in 12.03 refer to Villas’s

¹ The facts outlined in this section are a summary of relevant portions of the bench trial viewed in the light most favorable to the verdict.

landscaping plans that were drafted before the common-interest community's construction. These plans outlined where the rain gardens and trees would be placed on the property.

Any conflicts between Villas and members arising out of the Minnesota Common Interest Ownership Act and the governing documents are managed by Villas's board, which holds about two to three meetings each year. In August 2016, Villas's board began to receive a growing number of requests for tree trimming, due to certain trees partially blocking some of the members' views from their units. One of those requests came from the Sirotas. Villas planned to trim some trees upon agreement by affected members. Villas noted in a board meeting that the lakeside views were considered assets to the owners and there was a general agreement to protect those assets within reasonable limits.

Between October 2016 and September 2017, Villas held numerous board meetings—including a special board meeting to allow the Sirotas to air their grievances surrounding the tree—to address, among other items, whether to remove, remove and replace, or do nothing to the tree outside the Sirotas' window. During this time period, Villas sought advice from its arborist, who conducted the regular maintenance of the rain gardens and trees. At trial, the arborist testified that the trees on the property received regular maintenance, which consisted of trimming lower-level branches (branches that are approximately ten feet from the ground) and removing dead branches in order to allow sunlight to surrounding plants. Although the Sirotas requested that their tree be trimmed more extensively off the top to remove partial obstructions of their view of the lake, the

arborist advised the board against topping² the tree and expressed that he was hesitant to approve additional trimming or pruning of the tree because it would lead to more maintenance responsibilities for Villas in the future. As a result, the arborist testified that he advised Villas that the Sirotas' request of trimming the top of their tree was not a viable option. Ultimately, Villas, with consensus from other members—including members who were also affected by the tree's placement in front of their windows—did nothing to the tree. Unsatisfied with Villas's inaction, the Sirotas began sending emails to Villas about the tree as well as continuously bringing forth their concerns at Villas's board meetings.

Partly in response to the Sirotas' persistent communications, in December 2017 Villas adopted a new regulation called the Good Neighbor Policy pursuant to its powers under its bylaws. Primarily, the Good Neighbor Policy directs Villas's members to refrain from (1) bringing forth issues with the community that have previously been addressed and (2) "making unjustified or unwarranted accusations about violations of the law or the governing documents orally or in writing or in any public forum other than a meeting duly called for such purpose."

The Good Neighbor Policy does not discuss violations or fines. But Villas's other rules and regulations establish a complaint and enforcement procedure for policy violations. Following a complaint of an alleged violation of a Villas policy, these procedures require notice and an opportunity to be heard with Villas's board, which then determines appropriate and reasonable action in response to the alleged complaint or

² Topping refers to a tree-trimming practice where the whole top of the tree is removed.

violation. An “appropriate and reasonable action” includes fines. But fines are not to exceed \$100 for each violation. In 2019, the Sirotas were fined \$200 for two violations of the Good Neighbor Policy. The Sirotas paid those fines.

Between May 2020 and August 2020, the Sirotas sent approximately 10 to 13 emails to Villas’s board members about the tree. As a result, in October 2020, Villas sent the Sirotas a notice of further violations of the Good Neighbor Policy. But the notice did not list the specific provisions the Sirotas violated. A hearing with Villas’s board was scheduled for November 2020. Although given a notice of the hearing date, the Sirotas chose not to appear for the hearing because they wanted to pursue their case in district court. After the hearing, Villas fined the Sirotas \$1,200 for 12 violations of the Good Neighbor Policy. The Sirotas did not pay these fines.

In January 2021, the Sirotas filed a complaint against Villas primarily alleging that the tree was a private nuisance, Villas breached the covenants within its governing documents, Villas breached its duties to the Sirotas as members, and that the Good Neighbor Policy was invalid, making the fines levied against them for violating that policy unenforceable. In response, Villas answered the complaint and brought forth counterclaims, which alleged that the Sirotas breached covenants in Villas’s governing documents and sought payment of the Good Neighbor Policy fines. Villas also sought injunctive relief prohibiting the Sirotas from violating the Good Neighbor Policy and governing documents and a declaratory judgment on the validity of the Good Neighbor Policy, the fines, and the Sirotas’ violations of that policy. Villas then moved for summary judgment on all claims.

In an August 2021 order, the district court granted summary judgment for Villas on two of the Sirotas' claims: equitable estoppel and waiver. The primary claims—of private nuisance, breach of covenants by both parties, breach of duty by Villas, Villas's request for injunctive relief, whether the Good Neighbor Policy and its fines were valid, and attorney fees—proceeded to trial. After a bench trial, the district court concluded that Villas did not breach any covenants or duties, but that the tree was a private nuisance. And it concluded that the Sirotas were improperly fined for violations under the Good Neighbor Policy, but that Villas did not exceed its authority in enacting that policy. The district court denied Villas's request for injunctive relief and attorney fees because it was not the prevailing party and denied the Sirotas' request for attorney fees as well.

Villas and the Sirotas appeal.

DECISION

This appeal involves a barrage of alleged errors by the district court. Villas asserts that the district court erred on three grounds: (1) determining the tree was a private nuisance, (2) finding its fines under the Good Neighbor Policy against the Sirotas invalid, and (3) concluding it was not entitled to attorney fees. Meanwhile, the Sirotas contend that the district court erred on four grounds: (1) concluding Villas did not breach any covenants in its governing documents by its maintenance of the tree, (2) finding Villas did not breach any duties to the Sirotas, as its members, (3) determining Villas did not exceed its authority in adopting the Good Neighbor Policy, and (4) denying them attorney fees.

In reviewing these issues, first we note the standard of review. Next, we identify the applicable law that governs each issue. Finally, we apply that law to the facts in the

record to determine whether Villas breached any covenants in its governing documents, breached any duties to the Sirotas, or acted outside of its power in adopting—and fining the Sirotas under—the Good Neighbor Policy. After making those evaluations, we address whether the tree is a private nuisance and which party, if any, is entitled to attorney fees.

Generally, in reviewing findings and conclusions from a bench trial, “we do not reconcile conflicting evidence,” and we “give the district court’s factual findings great deference and do not set them aside unless clearly erroneous.” *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *rev. denied* (Minn. June 26, 2002). A finding is clearly erroneous if we are left with the definite and firm conviction that the district court made a mistake. *In re Distrib. of Att’y Fees between Stowman Law Firm, P.A. & Lori Peterson Law Firm*, 855 N.W.2d 760, 761 (Minn. App. 2014), *aff’d*, 870 N.W.2d 755 (Minn. 2015). When reviewing mixed questions of law and fact, we accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse-of-discretion standard. *Porch*, 642 N.W.2d at 477. We review issues of law de novo. *Distrib. of Att’y Fees*, 855 N.W.2d at 761.

I. The district court correctly concluded that Villas did not breach covenant 12.03 in its declaration when it planted the tree in a slightly different location from the final landscaping plans.

The Sirotas assert that since Villas did not plant the trees in the rain garden near the Sirotas’ unit in the locations specified in the final plans, Villas breached covenant 12.03 in its declaration. The district court concluded that Villas did not breach any covenants because the Sirotas failed to prove that the parties intended strict compliance with the final plans for tree placement.

Because a common-interest community’s governing documents—the declaration here—constitute a contract between the association and its members, we apply a de novo standard of review, which is applicable to contract interpretation because it is a question of law. *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *rev. denied* (Minn. July 19, 2011); *Swanson v. Parkway Ests. Townhouse Ass’n*, 567 N.W.2d 767, 768 (Minn. App. 1997). But whether the record supports the finding of fact that Villas did not breach the declaration is a question of fact we review for clear error. *Porch*, 642 N.W.2d at 477

Here, the declaration outlines the obligations Villas owes to the Sirotas as members of Villas. Specifically, section 12.03 of the declaration states that Villas “shall maintain any rain garden areas upon the Property as located and shown” on the final plans. The president of Villas testified that maintenance meant that the trees within the rain gardens were regularly trimmed by an arborist. And the arborist testified that he regularly removed dead branches and trimmed lower-level branches from the trees within the rain gardens on the Villas property. No section in Villas’s declaration obligates Villas to maintain the members’ lake views. Rather, Villas must maintain the rain-garden areas. On this record, the district court’s conclusion that Villas complied with section 12.03 on maintenance of the common elements, such as the tree at issue, was supported by the record and was not done in error.

Still, the Sirotas argue that the intention behind section 12.03 in the declaration was for Villas to strictly comply with the final plans when it planted the trees in the rain gardens. In asserting this argument, the Sirotas point to the phrase “as located and shown on the

final development plans” to show the intent to strictly conform to the final plans. Accordingly, they assert the mis-planting of the tree directly outside of the Sirotas’ balcony window is a breach of that covenant.

It is undisputed that the tree that partially obstructs the Sirotas’ view of the lake was not planted in precise conformance with the final plans. What is disputed, however, is whether a lack of strict adherence to these plans upon the initial planting of the trees in the rain garden is considered a breach of the covenant to maintain the rain gardens as shown in the final plans because one of the trees is partially obstructing members’ views of the lake.

Like the district court, we do not discern an intent of strict conformance from the phrase “as located and shown on the final development plans.” The district court here properly interpreted section 12.03 to allow for some flexibility, given the context provided by the final plan’s accompanying planting notes that permit field adjustments—notes that specifically stated that “*adjustments in location of proposed plant materials may be needed in field.*” This note provides support from the record that Villas, as described in the district court’s order, intended “to allow for the possibility that the plants’ exact locations as depicted in the [final plan] may be adjusted afterwards.”

In sum, the district court’s interpretation that “maintenance” does not include strictly adhering to the final plans was not in error. Thus the court properly determined that Villas did not breach covenant 12.03 in its declaration because its decision is supported by the record.

II. The district court properly concluded that Villas did not breach any duties to the Sirotas under the Minnesota Common Interest Ownership Act when it did not trim the tree outside of the Sirotas' window per their specific request.

The Sirotas further argue that Villas breached its duty to them when it did nothing to the tree outside of their window. Specifically, the Sirotas appear to claim that Villas acted dishonestly when it deferred to the other Villas members its decision on whether to remove, remove and replace, or do nothing to the tree. The district court concluded that Villas did not breach its duties to the Sirotas because the Sirotas failed to present evidence that Villas was dishonest or did not exercise good faith in addressing their request to trim the tree.

Recall, for findings and conclusions from a bench trial, we “give the district court’s factual findings great deference and do not set them aside unless clearly erroneous.” *Porch*, 642 N.W.2d at 477. A finding is clearly erroneous if we are left with the definite and firm conviction that a mistake has been made. *Distrib. of Att’y Fees*, 855 N.W.2d at 761. When reviewing mixed questions of law and fact, we accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse-of-discretion standard. *Porch*, 642 N.W.2d at 477.

To evaluate this issue, we turn to the Minnesota Common Interest Ownership Act section 515B.3-103(a), which codifies the duties imposed on a board of directors in a common-interest community. The Act explains that elected directors, in the performance of their duties, are required to exercise the care required of a director in a corporation or a cooperative—to act in *good faith*, in a manner the director *reasonably believes to be in the best interests* of the common-interest community, and with the care an *ordinarily prudent*

person in a like position would exercise under similar circumstances. Minn. Stat. § 515B.3-103(a) (citing to Minn. Stat. §§ 302A.251, 308B.455, and 317A.251 (2022)). Moreover, the directors are to fulfill the obligations and enforce the covenants of the bylaws, rules and regulations, and declarations in a uniform and fair manner upon the members. *Id.* Good faith means observance of two standards: (1) honesty in fact and (2) observance of reasonable standards of fair dealing. *Horodenski v. Lyndale Green Townhome Ass’n, Inc.*, 804 N.W.2d 366, 373 (Minn. App. 2011).

Turning to the circumstances here, the district court determined that Villas did not breach its duties to the Sirotas. The record provides ample evidence to support the district court’s determinations that the board of Villas operated in good faith, with the care of an ordinarily prudent director in a similar situation and in the interests of fairness among the other Villas members. *See* Minn. Stat. § 515B.103(a). For example, Villas (1) conducted two polls with the members regarding the Sirotas’ request to trim the tree, (2) consulted with its arborist to get feedback on the best route to handle the Sirotas’ request without ruining the foliage and overall landscape, and (3) called a special board meeting for the Sirotas to air their concerns surrounding the tree’s placement. These undisputed facts in the record establish that the district court did not abuse its discretion in determining Villas did not breach its duties to the Sirotas because Villas made a fair and honest attempt to appease all the members of Villas while also trying to reach a resolution with the Sirotas.

To persuade us otherwise, the Sirotas assert that Villas’s board was dishonest when it deferred to member votes to make a decision on their request. But the board minutes corroborate that Villas’s board of directors attempted to make a decision in the interests of

fairness to all members when they deferred action to member votes. And Villas acknowledged that the lake views were assets to the members, mentioned wanting to reach a compromise with the Sirotas on the tree issue, and noted efforts (within reasonable limits and within budget) to ensure members were on the same page about what to do with the tree—since it is a common element of the community. Finally, the Sirotas were not the only members affected by the tree at issue. Thus, Villas’s deference to member votes appears to have been in the interest of fairness, not dishonesty.

The Sirotas further assert that Villas acted dishonestly when it inaccurately communicated the Sirotas’ tree-trimming request to the other members. The Sirotas maintain that they requested a “trimming” of the tree, but Villas asked the members to decide between removal, removal and replacement, or doing nothing to the tree.³ In not using the word “trimming,” Villas breached its duty to them, the Sirotas contend.

This argument also fails. Villas’s options to its members aligned with the advice it was given from its arborist for how the tree could be fixed, which does not amount to dishonesty. The arborist testified that it told Villas that trimming the tree (as the Sirotas requested) and topping the tree (an alternative to trimming that Villas asked its arborist about) were not feasible options. This meant that only two routes were viable for potentially addressing the tree issue—removal or removal and replacement.

³ An email exchange from September 2017 outlines that Villas conducted two polls with its members. The first poll asked members whether they wanted to remove, replace, or do nothing to the tree. The second poll asked members whether they wanted to cut one trunk of the tree or do nothing.

In sum, the record supports the district court’s findings and ultimate conclusion that, although there was disagreement as to what should be done, Villas operated in good faith in making decisions regarding the tree.

III. The district court properly determined that Villas was within its authority when it adopted the Good Neighbor Policy but exceeded its authority when it levied fines against the Sirotas for alleged policy violations in 2020.

The Sirotas assert that Villas exceeded its authority as laid out in its bylaws when it enacted the Good Neighbor Policy. And Villas argues—while defending its authority to invoke the policy—that the district court erred when it vacated the fines Villas levied against the Sirotas for violating the policy. In resolving these issues, the district court concluded that, although the Good Neighbor Policy was validly enacted by Villas, Villas improperly levied fines against the Sirotas for violating the policy. Applying a de novo standard of review, we first address the validity of the Good Neighbor Policy, then turn to whether the fines were properly levied under that policy.

The Good Neighbor Policy

To determine whether Villas’s implementation of the Good Neighbor Policy exceeded its authority, we look to the Minnesota Common Interest Ownership Act and Villas’s bylaws. Villas’s bylaws section 6.4 adopted the exact language from the Minnesota Common Interest Ownership Act’s section 515B.3-102(a)(1)(i-vii), which grants a common-interest community the power to adopt rules and regulations surrounding the conduct of its members as long as it pertains to their health, safety, or welfare, noise or disturbing activity, or potential damage to the common elements or units. Specifically,

Minnesota Statutes section 515B.3-102(a)(1)(i-vii), and by extension Villas's bylaw 6.4, states:

(a) . . . [T]he association *shall have the power to: (1) adopt, amend and revoke rules and regulations not inconsistent with the articles of incorporation, bylaws and declaration, as follows: (i) regulating the use of the common elements; (ii) regulating the use of the units, and conduct of unit occupants, which may jeopardize the health, safety or welfare of other occupants, which involves noise or other disturbing activity, or which may damage the common elements or other units; (iii) regulating or prohibiting animals; (iv) regulating changes in the appearance of the common elements and conduct which may damage the common interest community; (v) regulating the exterior appearance of the common interest community, including, for example, balconies and patios, window treatments, and signs and other displays, regardless of whether inside a unit; (vi) implementing the articles of incorporation, declaration and bylaws, and exercising the powers granted by this section; and (vii) otherwise facilitating the operation of the common interest community[.]*

(Emphasis added.) Here, because the record reflects that the Good Neighbor Policy was enacted to extinguish any harassment and bullying transpiring among Villas's members, Villas properly adopted this policy consistent with provisions (a)(1)(ii) and (a)(1)(vii) of the bylaws—to regulate the conduct of unit occupants which may jeopardize the welfare of other occupants. Villas was thus within its power to adopt the Good Neighbor Policy.

To persuade this court otherwise, the Sirotas contend that, because there was no disturbing activity that needed to be rectified, Villas did not have the authority to implement the policy. But this proposed standard severely limits the broad power given to common-interest communities under the Minnesota Common Interest Ownership Act and Villas's bylaws to adopt rules and regulations, especially given the catchall provision,

which allows associations to adopt rules and regulations to “otherwise facilitat[e] the operation of the common interest community.” *See* Minn. Stat. § 515B.3-102(a)(1)(vii). Moreover, the other provision, (a)(1)(ii), does not read that the regulation *must* have been implemented due to disturbing activity in order to regulate conduct that may jeopardize members’ welfare. *Id.* (a)(1)(ii). Rather, the provision lists three “which-es” and the word “or” to show that at least one of the three conditions in (a)(1)(ii) can be the basis for the adoption of new rules and regulations. *Id.*

In sum, the district court did not err in concluding that Villas was within its power in adopting the Good Neighbor Policy to regulate members’ conduct.

Fines

Next, we turn to whether the fines Villas levied pursuant to the Good Neighbor Policy were within its power as a common-interest community. The district court vacated the fines because Villas did not “notify [the Sirotas] of specific rules [they] have violated, and which of [their] communications caused the violation,” and as a result the Sirotas would not have been able to defend themselves properly, even if they did appear at the hearing in front of the Villas’s board. In determining this issue, we give great deference to the district court’s findings of fact and do not set them aside unless they are clearly erroneous. *Porch*, 642 N.W.2d at 477.

The Minnesota Common Interest Ownership Act’s section 515B.3-102(a)(11) outlines the power of Villas to levy fines for violations of properly adopted rules and regulations: “[T]he association shall have the power to . . . after notice and an opportunity to be heard before the board or a committee appointed by it, *levy reasonable fines for*

violations of the declaration, bylaws, and rules and regulations of the association.”
(Emphasis added.)

Here, although Villas complied with its governing documents when it sent the Sirotas an email outlining a scheduled opportunity for them to be heard before the board in November 2020,⁴ Villas’s lack of specificity as to the portions of the Good Neighbor Policy that the Sirotas violated makes the fines invalid for lack of notice—which the district court implicitly found. And that implicit finding is supported by the record here. A common-interest association has no cause of action against a unit owner for fines when the association “never gave notice to [a unit owner] that he was violating [a] particular rule.” *See Hamline House Ass’n v. Eibensteiner*, 402 N.W.2d 832, 835 (Minn. App. 1987) (explaining that the condominium association could not fine one of its members for renting their unit to a family in violation of its bylaws without notice and an opportunity to be heard pursuant to Minnesota Statutes section 515A.3-102(a)(11) (1984)). As a result, because Villas failed to disclose the “particular rule[s]” that the Sirotas violated under the Good Neighbor Policy, the record supports the district court’s determination that Villas cannot levy fines against the Sirotas for violations of those rules. *Id.*

In sum, the record and caselaw adequately support the district court’s vacation of the fines levied by Villas against the Sirotas because Villas did not specifically outline the rules within that policy that the Sirotas violated before the hearing.

⁴ At oral argument, the Sirotas argued that they were also not given an opportunity to be heard. This argument fails. Villas sent a notice of violations of the Good Neighbor Policy that included a hearing date, time, and link to a virtual hearing. The Sirotas decided not to attend the hearing. This choice did not deprive them of an opportunity to be heard.

IV. The district court, after concluding that Villas did not breach any covenants or duties, erred in determining that the tree on its property was a private nuisance.

After concluding that the district court properly determined that Villas did not breach any covenants in its governing documents in its maintenance of the tree nor any duties to the Sirotas in handling their tree-trimming request, we now turn to whether the tree is a private nuisance. The district court found that the tree was a private nuisance because the tree materially and substantially infringed upon the free use and enjoyment of the Sirotas' unit through its partial obstruction of their view of Lake Minnetonka. Villas maintains that the tree is not a private nuisance because the district court's determination that it did not commit any wrongful conduct is inconsistent with the conclusion that the tree is a private nuisance. This assertion raises a legal issue, which we review *de novo*. *Porch*, 642 N.W.2d at 477.

A private nuisance is outlined in Minnesota Statutes section 561.01 (2022) as anything that obstructs the free use of property and interferes with the comfortable enjoyment of life. Specifically, the statute defines a private nuisance as:

Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance. An action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Minn. Stat. § 561.01.

Caselaw further clarifies this statute. In *Highview North Apartments v. County of Ramsey*,⁵ the Minnesota Supreme Court further defined a private nuisance as a type of damage that requires “some kind of conduct causing the nuisance harm which is *wrongful*.” 323 N.W.2d 65, 70 (Minn. 1982) (emphasis added) (quotation omitted). And what constitutes wrongful conduct varies, as the *Highview North Apartments* court explains, “and may at times be characterized as intentional conduct, negligence, ultrahazardous activity, violation of a statute or some other tortious activity.” *Id.* at 71.

Here, the district court concluded that the tree was a private nuisance based upon its factual finding that the tree substantially and materially interfered with the Sirotas’ comfortable enjoyment of their unit—because their enjoyment was directly tied to their view of Lake Minnetonka. The district court did not—in its public-nuisance analysis—identify any wrongful conduct by Villas. Nor, as explained above, did the district court determine Villas acted wrongfully in the enforcement of declaration 12.03 and its duties under the Minnesota Common Interest Ownership Act. Because wrongful conduct is a threshold factor in finding a private nuisance, the district court erred.⁶

⁵ The Sirotas assert that reliance on this case to establish the elements of a private-nuisance claim is incorrect due to a 2003 Minnesota Court of Appeals case, *Wendinger v. Forst Farms, Inc.*, which holds that a claim of private nuisance does not require proof that the nuisance harm resulted from a wrongful act except to the extent the plaintiff must prove fault on the part of the defendant. 662 N.W.2d 546, 551 (Minn. App. 2003), *rev. denied* (Minn. Aug. 5, 2003). But *Highview North Apartments*, as a Minnesota Supreme Court decision, is the controlling authority here, and we are bound by its holdings.

⁶ We observe that the parties below—while vigorously contesting whether Villas engaged in wrongful conduct—did not explicitly tie this issue to the public-nuisance claim, which was also hotly contested. The Sirotas maintain that Villas thus waived this issue under *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We discern that this issue still warrants

Highview N. Apartments, 323 N.W.2d at 70. And because the district court found no wrongful conduct, the court erred as a matter of law in concluding that the tree was a private nuisance.

Nor, upon our review of the record, do we discern wrongful conduct by Villas of the type generally associated with a private nuisance. In a typical private-nuisance case, a nuisance resulting from wrongful conduct is categorized as dangerous, toxic, or involving undisputed infringements on property rights. See *Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, Inc.*, 624 N.W.2d 796, 797 (Minn. App. 2001) (holding stray bullets from a gun club were a private nuisance for neighboring landowners because the gun club was trespassing on their land). For example, in *Highview North Apartments*, the private nuisance was water and sewage runoff into two apartment-building basements after municipalities discharged these waters into ponds on nearby lands, which they were not allowed to discharge on. 323 N.W.2d at 65, 70, 72. And in a similar situation involving a tree—although not a partial view obstruction—in *Holmberg v. Bergin*, a tree was determined to be a private nuisance and ordered to be removed because the tree was pushing a fence out of line and was physically raising the ground level of the sidewalk. 172 N.W.2d 739, 739 (Minn. 1969). None of these cases provide support that a tree partially obstructing a condominium-unit owner's view of Lake Minnetonka, but not

appellate review because the individually alleged wrongful-conduct issues—on covenants and duties—were thoroughly argued even though they were not explicitly tied to the public-nuisance claim raised under Minnesota Statutes section 561.01 until this appeal. But while we do not view this legal issue as waived, as the Sirotas argue, we sympathize with the district court which no doubt would have benefited from more explicit briefing below.

creating—through the wrongful conduct of another—a dangerous, toxic, or contravention of property rights of that owner, should be considered a private nuisance.

On this record, the district court’s conclusion that the tree was a private nuisance was legally inconsistent with its accompanying findings and conclusions, which firmly support that Villas did not commit any wrongful conduct. Accordingly, the district court erred in determining that the tree was a private nuisance.

V. The district court acted within its discretion in denying the Sirotas’ request for attorney fees, but whether Villas is entitled to attorney fees as the prevailing party must be remanded to the district court for reconsideration.

The Sirotas assert that the district court abused its discretion in denying their request for attorney fees under two sections of the Minnesota Common Interest Ownership Act. First, because they were the prevailing party. *See* Minn. Stat. § 515B.4-116(b) (authorizing the district court to award reasonable attorney fees and costs to the prevailing party). And second because Villas violated the Act and its governing documents. *See* Minn. Stat. §515B.4-116(a) (granting any person adversely affected by an association’s violation of the statute or its governing documents a right to claim appropriate relief). Meanwhile, Villas argues that if we were to reverse on the private-nuisance issue, it would be entitled to attorney fees as the prevailing party. Minn. Stat. § 515B.4-116(b).

The district court did not grant attorney fees to either party. In reviewing the parties’ claims, we “will not reverse the district court’s decision on attorney fees absent an abuse of discretion.” *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *rev. denied* (Minn. Aug. 21, 2007). We address each party’s claims for attorney fees in turn.

Here, the district court did not abuse its discretion in denying the Sirotas' request for attorney fees. The Sirotas' claim for fees as the prevailing party fails because our reversal of the private-nuisance issue no longer makes the Sirotas the prevailing party. Minn. Stat. § 515B.4-116(b). And their claim for fees as a party adversely affected by Villas's violations of the Act and its governing documents also fails given that Villas violated neither the Minnesota Common Interest Ownership Act nor its governing documents. Minn. Stat. §515B.4-116(a). As a result, the district court properly exercised its discretion in denying the Sirotas' request for attorney fees under both sections.

But the district court is entitled to revisit its determination that Villas was not the prevailing party and whether to award attorney fees based on our reversal of the private-nuisance issue. Minn. Stat. § 515B.4-116(b). Because we conclude that the district court erred in determining that the tree was a private nuisance, and Villas did not breach any covenants or duties, Villas may be entitled to attorney fees as the prevailing party. *Id.*⁷

⁷ The Sirotas also challenge the district court's grant of summary judgment on their claims of equitable estoppel and waiver. We review the granting of summary judgement under a de novo standard of review. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). Under this review, we determine, in viewing the evidence in the light most favorable to the Sirotas, whether a genuine issue of material fact exists and whether the district court erred in its application of law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). The Sirotas assert that there were genuine issues of material fact that should have reached the bench trial on both (1) equitable estoppel, that Villas promised to trim the tree, and (2) waiver, that Villas, in trimming other trees, waived its right to refuse to trim the tree. We disagree. There was nothing in the record that provided a genuine issue of material fact as to whether Villas made any promises to the Sirotas that it would trim the tree—the record is clear that Villas was consistently uncertain as to how to handle the Sirotas' requests. And Villas's trimming of other trees as a waiver is not supported by the record. It is undisputed that Villas, per section 12.03 of the declaration, must maintain the rain

In sum, the district court correctly concluded that Villas did not breach any covenants in its declaration, did not breach any statutory duties to the Sirotas, and did not exceed its authority in adopting the Good Neighbor Policy. And the district court properly vacated the fines levied against the Sirotas for violating the Good Neighbor Policy. But the district court erred in concluding that the tree was a private nuisance, given the lack of findings of wrongful conduct by Villas. As a result, the Sirotas are not entitled to attorney fees, as the district court concluded, but we remand to the district court the narrow question of whether Villas is entitled to attorney fees as the prevailing party.

Affirmed in part, reversed in part, and remanded.

gardens and the trees within them with regular trimming of the trees' branches. Accordingly, the evidence does not support different factual findings with respect to waiver because the arborist's tree trimmings were within his normal job duties. As a result, the district court did not err in granting summary judgment on these two claims.