STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1843

Kristie Kollmann, et al.,
Respondents,

vs.

Joseph M. Garding, et al.,
Appellants.

Filed August 7, 2023
Affirmed
Reilly, Judge

Stearns County District Court
File No. 73-CV-20-8402

Gerald W. Von Korff, Rinke Noonan, Ltd., St. Cloud, Minnesota (for respondents)

Sarah R. Jewell, River Valley Law, P.A., Waite Park, Minnesota (for appellants)

Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this dispute over a contract for deed for the sale of a family farm, appellant-vendors argue that the district court (1) erred by granting partial summary judgment for respondent-vendees; (2) erred by denying appellants' summary-judgment motion; (3) erred in making factual findings about the treatment of excess sale proceeds from the sale of

equipment following a trial on this issue; and (4) abused its discretion in awarding attorney fees. We affirm.

FACTS

Appellants Joseph and Janice Garding are the members of Garding Family Farm LLC. Garding Family Farm LLC is the fee owner of a 161-acre family farm in Stearns County, Minnesota. Respondents Kristie and Jeremy Kollmann are the Gardings' daughter and son-in-law.

Before 2018, the Kollmanns expressed interest in purchasing the farm.[1] The Gardings contemplated selling the farm to the Kollmanns for $3,250 per acre, or $523,250 total. The parties met with an accountant who recommended that the Gardings sell the farm to the Kollmanns on a contract for deed and file gift tax returns to reduce the balance due on the contract so that the Gardings would not have to pay capital gains tax on the transaction. The parties agreed to a listed contract price of $1,040,000 and a tax strategy was used to reduce the amount of payments received under the contract for deed to $413,250. This reduction was accomplished by a $626,750 gift, in the form of debt forgiveness, from the Gardings to the Kollmanns. In addition, the Kollmanns gifted a tractor and baler to the Gardings, which the parties agreed was worth $110,000. The sale proceeds from the tractor and baler would be applied to the purchase price of the farm. This resulted in a total consideration from the Kollmanns to the Gardings of $523,250. The

[1] These facts are derived from the summary-judgment record and are presented in the light most favorable to the Gardings. *See STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

tractor and baler ultimately sold for $140,000, which was $30,000 over the expected sales price.

The parties signed a purchase agreement, contract for deed, and lease. The Kollmanns agreed to buy the farm from the Gardings for a contract price of $1,040,000. The Kollmanns agreed to pay the Gardings $110,000 as a down payment financed by the sale of the tractor and baler. The Kollmanns also agreed to lease back to the Gardings the homestead and one acre of land surrounding the home for so long as either of the Gardings wanted to live on the property. The lease contained an indemnity provision, under which the Gardings agreed to "pay, and to protect, indemnify, and save [the Kollmanns] harmless" for any liabilities, losses, damages, costs, expenses, or suits "of any nature whatsoever."

After the closing, the Gardings filed federal gift tax returns documenting their gift of $626,750 to the Kollmanns as credit on the contract for deed. This eliminated the Gardings' capital gains tax on the sale and left a principal balance of $413,250 due under the contract for deed. The Kollmanns later made several payments on the contract for deed, which the Gardings accepted.

In 2020, the parties' relationship began to deteriorate. The Kollmanns decided to pay off the contract for deed early. The payoff amount as of October 1, 2020, was $257,012.82. The Kollmanns made a payment in this amount by delivering a check to the Gardings' attorney's office. The Gardings refused to accept the check and disputed the payoff amount.

A short time later, the Kollmanns filed a complaint against the Gardings seeking a declaration of the rights and responsibilities of the parties under the contract for deed and the lease. The Kollmanns sought an order requiring the Gardings to accept the payment and deliver a deed to the property to the Kollmanns. The Kollmanns asserted claims for breach of contract for deed, breach of lease, nuisance, and tortious interference with business relationships. The Kollmanns sought monetary and declaratory relief, as well as attorney fees.

The Gardings filed an answer generally denying the allegations and asserting counterclaims for breach of contract for deed and breach of lease. The Gardings claimed that the contract for deed should be cancelled or rescinded. The Gardings later sought to rescind the $626,750 gift to the Kollmanns by amending their tax returns. The Gardings contended that the Kollmanns were liable for the full contract price of $1,040,000, which excluded the gift. In March 2021, the Gardings served the Kollmanns with a notice of cancellation of contract for deed. The cancellation notice stated that the Kollmanns owed $754,954.60 under the contract for deed to pay off the debt.

The parties cross-moved for summary judgment. The Kollmanns sought an order compelling the Gardings to accept the balance due on the contract for deed and convey title to the Kollmanns, subject to the Gardings' lifetime lease. The Gardings argued that the Kollmanns materially breached the contract for deed and sought an order permitting the Gardings to rescind the parties' contract for deed, purchase agreement, and lease. Following a hearing, the district court issued an order partially granting the Kollmanns' summary-judgment motion. The district court determined that the Kollmanns "tendered to

[the Gardings] the balance due on the Contract of $257,012.82," and that the Gardings were required "to accept that payment and deliver title to [the Kollmanns] according to the terms of the Contract for Deed, subject to [the Gardings'] home lease." The district court also "permanently enjoined and extinguished" the Gardings' attempt to cancel the contract for deed. But the district court determined that there was a disputed material fact as to whether the excess sales proceeds of $30,000 from the $140,000 tractor and baler sale should be applied to the contract for deed, or whether those excess funds were meant as a gift to the Gardings. As a result, the district court denied the Kollmanns' summary-judgment motion related to that issue. The district court also denied the Gardings' summary-judgment motion on their breach-of-contract and breach-of-lease counterclaims.

Later, the district court held a two-day court trial on the outstanding issues, including: (1) how to properly apply the excess $30,000 from the sale of the tractor and baler; (2) the validity of the lease; and (3) the Kollmanns' claim for attorney fees. Following trial, the district court issued an order determining that the $30,000 in excess sales proceeds should be applied to the balance on the contract for deed. The district court ordered that the lease agreement would remain in effect according to its terms. Finally, the district court found that the Kollmanns were entitled to attorney fees of $80,491.12. The district court later issued an amended order reflecting that the correct amount of attorney fees was $70,591.12, because of a clerical error.

The Gardings appeal.

DECISION

I. The district court did not err in its summary-judgment determinations.

a. Standard of review

Summary judgment is appropriate if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party." *Leeco, Inc. v. Cornerstone Bank*, 898 N.W.2d 653, 657 (Minn. App. 2017), *rev. denied* (Minn. Sept. 27, 2017). We review a grant of summary judgment de novo, viewing "the evidence in the light most favorable to the nonmoving party and resolv[ing] all doubts and factual inferences against the moving part[y]." *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 874 (Minn. 2019) (quotation omitted).

b. The district court did not err in granting the Kollmanns' summary-judgment motion.

The Gardings argue the district court erred by granting the Kollmann's motion for summary judgment and ordering the Gardings to accept the balance due on the contract for deed and convey title to the Kollmanns.

In its summary-judgment order, the district court included a statement of undisputed material facts. Among other things, the district court determined it was undisputed that: (1) the Kollmanns agreed to buy the farm from the Gardings for a contract price of $1,040,000; (2) a tax strategy was used to reduce the amount of payments received to $413,250, which was accomplished by the Kollmanns' gift to the Gardings of a tractor and

baler, valued at $110,000, and the Gardings' gift of $626,750 to the Kollmanns; (3) the Gardings stated they wanted $3,250 per acre, equaling $523,250; (4) the Gardings issued a tax form showing gross proceeds from the sale of the property of $413,250; (5) sales proceeds of $110,000 from the sale of the tractor and baler were applied to the contract for deed as a down payment; (6) the Kollmanns made additional principal and monthly payments; and (7) the remaining balance was $257,012.82.

In oral arguments to this court, counsel for the Gardings acknowledged that these facts are uncontested. Even so, the Gardings claim they did not give a gift of $626,750 to the Kollmanns to reduce the remaining balance on the contract for deed. The Gardings claim the existence of the gift is a disputed fact question that should have precluded summary judgment. A factual dispute is material for summary-judgment purposes "if its resolution will affect the outcome of [the] case." *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996) (citation omitted). "The substantive law identifies which facts are material." *Bond v. Comm'r of Revenue*, 691 N.W.2d 831, 836 (Minn. 2005) (citation omitted). A voluntary payment from a parent to a child is generally presumed to be a gift. *Stahn v. Stahn*, 256 N.W. 137, 137 (Minn. 1934). Yet the presumption of donative intent may "be overcome by proof that the intention of the parent was not to make an absolute gift, as by declarations or acts of the parties inconsistent with the idea that a gift was intended." *Id.*

Here, the unrebutted evidence establishes that the Gardings made a gift to the Kollmanns. The Gardings said they wanted to sell the farm to the Kollmanns for $3,250 per acre. Joseph Garding testified in his deposition that the contract for deed reflected a

purchase price of $1,040,000. Counsel for the Kollmanns and Joseph Garding then engaged in the following exchange:

> Q: And then you would reduce [the balance of $1,040,000] by the gifts and you get the same amount of money?
> A: Yes.
> Q: Okay. And that's how much you wanted for the property?
> A: No, I didn't want $1,040,000 for the property. Not at all.
> Q: You wanted $523,000?
> A: That's what I said, yes.

The parties' accountant recommended that the Gardings sell the farm to the Kollmanns on a contract for deed and file gift tax returns to reduce the balance due on the contract. The accountant explained that the purpose of structuring the sale in this way was to alleviate the Gardings' obligation to pay capital gains taxes on the transaction. It is uncontested that the Gardings filed federal gift tax returns in 2018 reflecting each parent's share of the gift. These tax returns reflect that each parent made a gift to the Kollmanns of $313,375 for a total of $626,750.

The Gardings contend they did not make an absolute gift because they filed amended tax returns revoking the gift. The Gardings argue the gift should not be considered final until the time for lawfully amending the tax return has passed. The Gardings do not cite any precedential caselaw for this proposition.[2] And caselaw instructs that a completed gift is nonrevocable. *See, e.g.*, *Brennan v. Carroll*, 111 N.W.2d 229, 242 (Minn. 1961) (Otis, J., dissenting) (collecting caselaw stating that once a gift is delivered,

[2] The Gardings cite a nonprecedential case from another jurisdiction, which is not binding on this court. *See* Minn. Stat. § 480A.08, subd. 3 (2022) (recognizing that unpublished decisions are not precedential); *see also Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (noting that cases from other jurisdictions are not binding).

such delivery may not be revoked); *Larkin v. McCabe*, 299 N.W. 649, 655-56 (Minn. 1941) (noting that a gift, once completed, cannot later be revoked). Here, the Gardings testified they intended to sell the farm for $3,250 per acre, or $523,250 total. This gift was reflected in the Gardings' 2018 tax returns. We acknowledge that "[t]he non-moving party does not need to produce clear and convincing evidence to defeat a summary judgment motion." *Anderson v. State, Dep't of Nat. Res.*, 693 N.W.2d 181, 191 (Minn. 2005). Even so, the nonmoving party must "do more than simply show that there is some metaphysical doubt as to the material facts." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997) (quotation omitted). The Gardings have not presented facts sufficient to survive a motion for summary judgment on the purchase price of the farm because they stated they only wanted to receive $523,250 for the 161-acre farm.

The Gardings also argue the district court erred in determining the payoff amount of the farm. Again, the undisputed facts do not support this argument. The Kollmanns agreed to buy the farm for a contract price of $1,040,000. Following the $626,750 gift from the Gardings to the Kollmanns, the remaining balance was $523,250. Joseph Garding acknowledged that the Kollmanns made several payments to the Gardings, which the Gardings accepted. The payoff amount as of October 1, 2020, after these payments were applied to the $523,250 balance, was $257,012.82. The Kollmanns delivered a check in this amount to the Gardings' attorney. Because the district court did not err in determining that the Gardings made a gift to the Kollmanns of $626,750 and intended to receive $523,250 from the sale of the farm, the district court likewise did not err in determining that the payoff amount was $257,012.82. As a result, we conclude the district court did

not err in granting summary judgment because there was not a genuine issue of material fact about the remaining balance of $523,250, following the Gardings' gift, or the payoff amount of $257,012.82.

c. The district court did not err by denying the Gardings' summary-judgment motion and dismissing their counterclaims.

The Gardings argue the district court erred by denying their motion for summary judgment on their counterclaims for breach of contract and breach of lease. The Gardings urge this court to reverse the district court's order and instead order that the contract for deed be cancelled as a remedy for the Kollmanns' purported breach.[3]

The Gardings asserted counterclaims for breach of contract and breach of lease, alleging that the Kollmanns materially breached the contract for deed by removing trees from the property in violation of the contract terms. The contract for deed included a provision in which the Kollmanns agreed not to cut down live trees without written permission from the Gardings. The Gardings contend that the Kollmanns had trees removed from the property without first obtaining written permission to do so. In their reply to the counterclaim, the Kollmanns asserted as a defense that "the parties settled the tree cutting dispute by an agreement drafted by [the Gardings'] attorney. Any trees cut

[3] The Gardings assert the district court abused its discretion by dismissing the counterclaims on its own initiative and without a properly filed summary-judgment motion. Even so, Minnesota recognizes a district court's inherent authority to grant summary judgment sua sponte. *See Bell v. St. Joseph Mut. Ins. Co.*, 990 N.W.2d 504, 509-10 (Minn. App. 2023) (discussing procedures district court must follow in granting summary judgment on its own initiative); *Septran, Inc. v. Indep. Sch. Dist. No. 271*, 555 N.W.2d 915, 920 (Minn. App. 1996) ("A district court may, sua sponte, grant summary judgment if, under the same circumstances, it would grant summary judgment on motion of a party." (quotation omitted)), *rev. denied* (Minn. Feb. 26, 1997). We therefore reject this argument.

thereafter were by consent." In its summary-judgment order, the district court determined that it was a matter of undisputed fact that "[the Gardings'] previous counsel reached a settlement regarding the tree cutting" with the Kollmanns. The district court reasoned that because these claims were settled by Gardings' previous counsel, there was no longer a factual dispute on this issue. We agree.

Reaching a settlement without trial is "greatly favored, and such agreements will not lightly be set aside by Minnesota courts." *Beach v. Anderson*, 417 N.W.2d 709, 711-12 (Minn. App. 1988), *rev. denied* (Minn. Mar. 23, 1988); *see also Skalbeck v. Agristor Leasing*, 384 N.W.2d 209, 212 (Minn. App. 1986) ("Settlement agreements are presumed to be valid in Minnesota."). The intent of the parties is determined by examining the plain language of the contract. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 581-82 (Minn. 2010). The district court must first determine whether the language of the settlement agreement is clear and unambiguous. *See id.* at 582. If the language is found to be clear and unambiguous, then the settlement agreement will be enforced by giving the language its plain and ordinary meeting. *Id.* (citations omitted).

Here, the settlement agreement provided: "On this day, January 30th, 2020, an agreement between Joe and Janice Garding and Jeremy and Kristie Kollmann [was reached, regarding] the removal of trees/brush that are marked and circled as indicated on [the] map attached." This document was signed by the Gardings and the Kollmanns on January 30, 2020. The document also included a map showing which trees could be removed. On February 10, 2020, the parties signed a second document clarifying which trees could be cut down on the property. To successfully oppose summary judgment, the

Gardings must present the district court with a "genuine issue as to any material fact" showing that the parties' agreement is not enforceable. Minn. R. Civ. P. 56.01. The Gardings have not done so. For these reasons, the district court did not err by granting summary judgment for the Kollmanns on the Gardings' counterclaims.[4]

The Gardings and the Kollmanns signed a document that, in plain and unambiguous language, settled their dispute about the trees. The district court properly gave effect to the parties' agreement and determined that there were no outstanding issues related to the Gardings' counterclaims. Given the parties' settlement agreement, we conclude the district court did not err by enforcing the agreement and dismissing the Gardings' counterclaims.[5]

II. The district court did not clearly err in its findings related to excess proceeds from the sale of equipment, following a trial on this issue.

The Gardings challenge the district court's findings, following a court trial, about the proper treatment of excess proceeds from the sale of the tractor and baler. The Gardings did not file a motion for a new trial. When an appellant does not move for a new trial in the district court, we will not consider a new-trial argument for the first time on appeal.

---

[4] The Gardings rely on a nonprecedential case, *Woodard v. Krumrie*, No. A19-0800, 2020 WL 996746, at *1 (Minn. App. Mar. 2, 2020), *rev. denied* (Minn. May 19, 2020), in support of their argument that the Kollmanns breached the contract for deed. We do not consider this case to be persuasive in the context of this case. *See also Kuhn v. Dunn*, 990 N.W.2d 491, 493 (Minn. App. 2023) (determining that *Woodard* lacked persuasive value in the context of the intestate transfer at issue in *Kuhn*).

[5] The Gardings also argue the district court erred by permanently enjoining cancellation of the contract for deed and ordering specific performance in favor of the Kollmanns. As discussed, the district court did not err in determining that there are no material facts in dispute about the remaining contract balance following the gift, or the payoff amount of the contract. The district court also did not err in determining that the Kollmanns tendered payment in full. Thus, we do not reach these arguments.

Sauter v. Wasemiller, 389 N.W.2d 200, 202 (Minn. 1986). With no post-trial motion for a new trial, an appellant may obtain only limited appellate review concerning whether the evidence sustains the findings of fact and whether the findings sustain the conclusions of law and the judgment. *Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976).

The Kollmanns gifted a tractor and a baler to the Gardings. The parties anticipated this equipment was worth around $110,000. The parties agreed to apply the sale proceeds from this equipment to the purchase price of the farm. The equipment eventually sold for $140,000. In its summary-judgment order, the district court determined there was a disputed question of material fact as to whether the $30,000 in additional sales proceeds should be applied to the contract for deed, or whether it was meant as a gift to the Gardings. Following a two-day court trial, the district court determined the $30,000 should be applied to the balance on the contract for deed. On appeal, the Gardings argue the district court erred by determining the excess sales proceeds were intended to be applied to the principal balance of the parties' contract for deed. The Gardings claim the money should have been allocated directly to the Gardings.

On review, we conclude that the district court's verdict is justified by the evidence. The Kollmanns and their accountant testified that the parties agreed that if the equipment sold for more than $110,000, the extra money would be applied to the balance due on the contract for deed. The equipment sold in July 2019 for $140,000. The check was made payable to Garding Family Farm LLC and was delivered to Joseph Garding. The district court, serving as fact-finder, found that Joseph Garding told the Kollmanns not to make payments on the contract for deed balance until after the sale of the equipment. According

to the district court, "[t]his indicates that Mr. Garding knew the Contract for Deed payments would change depending on the sale price of the equipment." The district court also found that "[a]ll parties understood the equipment sale price would change the amortization and payments under the Contract for Deed." The new amortization schedule, prepared in October 2020, included the extra $30,000 received from the sale. The district court noted there was "no testimony or evidence disputing the Kollmanns' and [the accountant's] testimony that the pre-closing agreement was that any money received beyond the $110,000 assumed sale price of the tractor and baler would be credited to the Contract for Deed." The district court also found the Kollmanns would be "entitled to apply the extra $30,000 to the balance due on the Contract for Deed."

The Gardings argue there is other testimony supporting a conclusion that the $30,000 should have been a direct gift to the Gardings, rather than a payment on the contract for deed. But the district court evidently credited the testimony presented by the Kollmanns and did not credit the testimony presented by the Gardings. The district court, acting as fact-finder, was permitted to judge the credibility of the witnesses and we defer to those credibility determinations. *See City of Minnetonka v. Carlson*, 298 N.W.2d 763, 767 (Minn. 1980) (noting a district court sitting without a jury "is the sole judge of the credibility of witnesses and may accept all or only part of any witness' testimony").

The Gardings also argue the district court improperly intervened at trial by questioning the accountant. The district court asked the accountant about the amortization schedule. The district court then gave counsel a chance to ask any follow-up questions they would like to ask, based on the district court's line of questioning. The Gardings did

not object to the district court's questions. We note, first, that a judge is expressly authorized to question witnesses. Minn. R. Evid. 614(b). Further, a party must object to the district court's questioning to preserve the issue for appeal. Minn. R. Evid. 614(c). Because this issue was not presented to or considered by the district court, we decline to reach it. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (declining to consider issues raised for the first time on appeal).

In sum, we conclude that the record sustains the findings of fact, and the findings sustain the conclusions of law and judgment. We therefore affirm the district court on this issue.

III. The district court did not abuse its discretion in awarding attorney fees.

The Gardings urge this court to reverse the district court's order awarding the Kollmanns attorney fees. Generally, "attorney fees are not recoverable in litigation unless there is a specific contract permitting or a statute authorizing such recovery." *Dunn v. Nat'l Beverage Corp.*, 745 N.W.2d 549, 554 (Minn. 2008) (quotation omitted). "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).

The Kollmanns sought contract-based attorney fees. Contract interpretation is a question of law that we review de novo. *St. Jude Medical, Inc. v. Carter*, 913 N.W.2d 678, 682-83 (Minn. 2018). "Because the intent of the parties is typically determined from the plain language of a written contract we generally enforce the agreement of the parties as expressed in the language of the contract." *Id.* at 683 (citation and quotation omitted). If

the contract's language is unambiguous, we enforce the agreement as written. *Dykes*, 781 N.W.2d at 582. Here, the lease agreement provided for an award of attorney fees and costs. The lease agreement permits the Gardings to maintain their homestead on one acre of land. The lease contains an indemnity provision in which the Gardings

> agree[d] to pay, and to protect, indemnify, and save [the Kollmanns] harmless from [a]nd against, any and all liabilities, losses, damages, costs, expenses (including all reasonable attorney's fees and expenses of [the parties]), causes of action, suits, claims, demands, or judgments of any nature whatsoever arising from . . . violation by [the Gardings] of any contract or agreement to which [the Gardings are] a party . . . affecting the Leased Premises or any part thereof, or the ownership, occupancy, or use thereof.

The Gardings claim the indemnification clause in the lease agreement relates exclusively to the one-acre portion of the farm where the Gardings' house is located. The district court disagreed and, relying on the plain language of the lease agreement, determined that "the plain language of the lease is written broadly enough to allow [the Kollmanns] to recover attorney's fees in this action. The indemnification clause allows [the Kollmanns] to recover attorney's fees arising from violation by [the Gardings] of *any* contract or agreement affecting the leased premises." The district court supported its determination:

> It is undisputed that the Gardings refused to accept the payoff check of $257,012.82. [The Kollmanns] retained [an] attorney . . . and incurred legal fees attempting to convince the Gardings to accept the full payment under the Contract for Deed. [The Kollmanns] then retained [additional counsel] and commenced this action to enforce their right to pay off the Contract for Deed. As such, the fact that [the Kollmanns] sued based upon [the Gardings'] violation of the Contract for Deed is covered by the lease's broad language.

We agree. The right to seek attorney fees and costs is clearly and unambiguously provided for in the parties' lease agreement. The lease agreement refers to "any and all liabilities" arising from the Gardings' violation of "any contract or agreement to which [they] are a party." Although found in the lease agreement, the attorney-fee provision is broadly worded and contemplates an award of attorney fees for a breach of *any* agreement related to the property. The undisputed facts show that the Kollmanns tried to deliver a check to the Gardings to pay off the contract for deed and the Gardings refused to accept it, requiring litigation. Thus, we conclude the district court did not abuse its discretion in awarding attorney fees and costs to the Kollmanns based on the plain language of the parties' agreement.

Affirmed.