STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0038
A23-0039
A23-0041
A23-0277

In re the Estate of: Darlene Legred,
Deceased (A23-0038),

and

Brenda Legred, f/k/a Brenda Godlove,
Respondent,

vs.

Brent Legred,
Appellant (A23-0039),

and

The Estate of Darlene Legred, a/k/a Darlene I. Legred,
Defendant,

Merchants Bank, NA,
Respondent,

and

In re the Credit Shelter Trust Established pursuant to the Last Will and Testament of
Thilmer M. Legred dated November 25, 1996 (A23-0041),

and

Brenda Legred,
Respondent

vs.

Brent Legred, et al.,
Appellants (A23-0277).

Filed September 18, 2023
Affirmed
Slieter, Judge

Faribault County District Court
File Nos. 22-PR-18-444, 22-CV-20-675, 22-PR-20-413, 22-CV-22-337

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Considered and decided by Slieter, Presiding Judge; Larkin, Judge; and Hooten, Judge.*

NONPRECEDENTIAL OPINION

SLIETER, Judge

This appeal concerns a district court's judgment resolving matters in an intrafamily dispute between two siblings—appellant and respondent—over agricultural land inherited from their parents. Appellant challenges the district court's judgment in two ways. First, appellant challenges the district court's conclusion that it lacked authority to enforce a purported settlement agreement due to appellant's then-pending appeal of an earlier judgment. Second, appellant challenges the district court's confirmation of the referees'

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

partition report allocating the farmland. Because the district court lacked authority to confirm the purported settlement agreement and because the district court did not err in confirming the referees' partition report, we affirm.

FACTS

This is the second appeal stemming from a dispute between siblings, appellant Brent Legred and respondent Brenda Legred, over primarily agricultural land in Faribault County (the property), totaling slightly over 800 tillable acres. Brent and Brenda's[1] parents owned and farmed the property for many years. Brent and Brenda's father died in 2011, and their mother died in 2018. At the time of their mother's death, the property was owned partly by their mother and partly by a trust established by their father's will. Following mother's death, Brent continued to farm the property pursuant to his mother's will, which provides:

> 2.4 I give my son Brent Legred a right of first refusal to purchase any and all interest which I may have at the time of my death in the following described tracts owned by me and by the Thilmer Legred Family Trust:
> . . . .
>
> 2.5 I grant to my son Brent Legred an option to rent all of my agricultural real estate described in paragraph 2.[4[2]] excluding my building site at 90% of the average fair rental value in Faribault County.

But the siblings could not agree on how much Brent owed in rent pursuant to their mother's will. This disagreement caused the litigation leading to the first set of

[1] For clarity, we refer to members of the family by first names only.
[2] The parties agree that the will contains a clerical error in the paragraph, stating 2.3 instead of 2.4.

consolidated appeals, with Brent as the appellant and Brenda as cross-appellant. *Legred v. Legred*, No. A22-0543, 2023 WL 3047794 (Minn. App. Apr. 24, 2023).

Mediation and Requests to Stay First Appeal

During the pendency of the first appeal, the parties appeared for a probate hearing at which the district court ordered the parties to "attempt ADR" on issues relating to the parties' claims involving their mother's estate. The parties retained a mediator and agreed that mediation would "be expanded to encompass all outstanding issues in an effort to reach a global resolution." The parties attended mediation on July 21, 2022, for more than 13 hours. The mediator made a video recording of the terms discussed, and a transcript was produced and submitted to the district court. As the meditation session came to a close, the mediator stated, "So counsel, you have your work cut out for you in terms of drafting the settlement agreement. I'd like to see the draft before it gets signed because I want to make sure that it's got all the magic language that makes it a [proper] settlement agreement."

Brent's counsel prepared the initial draft of a written settlement agreement and sent it to Brenda's counsel on August 2, 2022. The parties continued to exchange drafts through September, when Brent's counsel circulated a fifth draft. No subsequent drafts were circulated, and no written agreement was reached.

Between August and November 2022, Brent—or the parties jointly—filed four requests to extend the briefing schedule or stay the first appeal pending a finalized "global" settlement agreement. We granted each of the requests.

On October 11, 2022, Brent filed a motion in district court to enforce the purported settlement agreement. On December 6, 2022, and following a hearing on Brent's motion, the district court issued an order and judgment denying Brent's motion to enforce the purported settlement agreement (and, separately, confirming the referees' partition report, as explained below). As a result of that judgment, Brent sought another stay of the first appeal, which our court denied. On April 24, 2023, our court resolved the first appeal by affirming the district court's March 21, 2022 order and judgment.

Partition

Brent did not appeal the portion of the district court's March 21, 2022 order and judgment granting a partition and does not dispute that the property must be partitioned. The day after Brent appealed other aspects of the judgment, he stipulated to the appointment of three partition referees to recommend a partition. The district court subsequently appointed the referees in the stipulation.

The referees completed their recommendation report on September 15, 2022. On September 30, 2022, Brenda moved to confirm the report. Brent filed a responsive motion opposing confirmation. In the December 6, 2022 order and judgment in which the district court denied Brent's motion to enforce the settlement agreement, the district court granted Brenda's motion to confirm the referees' partition report, which set forth the partition of the farmland between Brent and Brenda.

These consolidated appeals follow.

DECISION

I. The district court properly concluded that it did not have authority to enforce the purported settlement agreement.

Brent asserts that the district court (1) "retained jurisdiction to enforce the settlement agreement" consistent with Minn. R. Civ. App. P. 108.01, subd. 2, and (2) erred in its alternative conclusion "that the parties did not reach a binding agreement during the July 21 mediation." Because the district court did not err in determining that it lacked authority to enforce the purported settlement agreement, we need not address Brent's second argument.

The district court determined that it did not have authority to enforce the purported settlement agreement because it would "necessarily affect [a] prior order which is appealed from" and, thus, violate Minn. R. Civ. App. P. 108.01, subd. 2. We review the district court's interpretation of procedural rules *de novo*. *See Zirnhelt v. Carter*, 843 N.W.2d 270, 274 (Minn. App. 2014) (citing *Eclipse Architectural Grp. v. Lam*, 814 N.W.2d 692, 696 (Minn. 2012)). The procedural rule at issue is Minn. R. Civ. App. P. 108.01, subd. 2, which states, in relevant part:

> Rule 108.01. Effect of Appeal on Proceedings in Trial Court
>
> . . . .
>
> Subd. 2. Suspension of Trial Court's Authority to Make Orders Affecting Judgment or Order on Appeal. . . . [T]he filing of a timely and proper appeal suspends the trial court's authority to make any order that affects the order or judgment appealed from, although the trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from.

Resolution of the authority issue turns on whether the purported settlement agreement was an independent, supplemental, or collateral matter with respect to the first appeal. The district court determined that it was not, because the purported settlement agreement included "a new mechanism for determining the rent amount that Brent Legred will be required to pay," which "figured prominently in the district court trial and resulted in the determination of a rental amount."

Brent argues that Minn. R. Civ. App. P. 108.01, subd. 2, did not preclude the district court from enforcing the purported settlement agreement because (1) "the facts relating to settlement agreement arose after the [c]onsolidated [a]ppeal was already pending," and (2) "its enforcement does not require consideration of the merits of the issue on appeal." We are unpersuaded.

Many of the facts relating to the purported settlement agreement are not different from the then-pending consolidated appeal. The first appeal stemmed, in part, from district court determinations regarding the appropriate rental amount for Brent to pay the trust and the estate. This is one of the very issues the parties attempted to mediate. The summary of the mediation as described in the transcript states that the parties discussed Brent's appropriate rental amount, and both parties agreed to dismiss their pending appeals.

Additionally, the subsequent written settlement drafts indicate that the parties contemplated Brent's rental option; his lease terms; the rent Brent owed to the estate, the trust, and Brenda; and dismissal of claims pending in the first appeal. And it is no surprise that the parties discussed the same facts and issues involved in the first appeal during mediation because, and as previously noted, the parties agreed that mediation would "be

expanded to encompass all issues in an effort to reach a global resolution." Because the mediation addressed the very facts and issues involved in the first appeal, determination of whether the mediation resulted in an enforceable agreement is not "independent of, supplemental to, or collateral to the order or judgment appealed from." Minn. R. Civ. App. P. 108.01, subd. 2.

We are also unpersuaded by the caselaw Brent relies on because the cases are easily distinguished. In *Perry v. Perry*, we concluded that the district court had authority to consider a motion to modify child support despite a pending child-support appeal because the motion to modify "was supplemental and collateral to the issue on appeal." 749 N.W.2d 399, 401 (Minn. App. 2008). In that case, our analysis of Minn. R. Civ. App. P. 108.01 turned on whether the modification order would "necessarily affect" the previous child-support order. *Id.* at 402-03. We concluded that it did not. *Id.* at 403. We reasoned that "two principles" assist with this conclusion. *Id.* "First, an order does not necessarily affect the order on appeal if it involves a new set of facts and does not require the district court to consider the merits of the issue on appeal." *Id.* And second, "in the family-law context, the district court's authority to act should be construed in a way that permits the courts to respond to changing circumstances and protect the best interests of the children." *Id.*

The circumstances of a family-law case are different from those in this case. A "proper motion" for modification of *child support* "must be based on allegations of changed circumstances" and therefore must necessarily allege "new facts" separate from the issues relevant to a pending appeal. *Id.* Here, the facts discussed during the underlying

mediation did not involve "changed circumstances" such that new facts were before the district court when considering whether to enforce the purported settlement agreement. As we noted above, the order on appeal involved many of the exact same facts and issues as the purported settlement agreement, which comports with the parties' desire to reach a "global settlement" of all of their disputes, apparently including the then-pending appeals.

Brent also directs us to *In re Thulin*, wherein the district court issued an order continuing civil commitment while Thulin's appeal of his initial civil commitment was pending. 660 N.W.2d 140, 142-43 (Minn. App. 2003). Thulin challenged the district court's jurisdiction over matters related to his continued commitment due to his then-pending appeal. *Id.* This court applied Minn. R. Civ. App. P. 108.01 and concluded that, contrary to Thulin's argument, "a determination of continued commitment is supplemental to and independent of the initial order of commitment being appealed, and jurisdiction on that issue remains in the district court." *Id.* at 143. As in a modification of child-support proceeding, continued civil commitment necessarily requires consideration of facts coming into existence after the initial commitment. *See id.* at 144 (noting standard is *continued* mental illness and safety risk). Thus, *Thulin* is not instructive.

In sum, the district court properly determined that it lacked the authority to enforce the purported settlement agreement.[3]

[3] Though we need not reach Brent's argument that the district court erred in determining that the parties did not reach a binding agreement during the mediation, we note that "The existence and terms of a contract are questions for the fact finder." *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992). Even a cursory review of the record shows no clear error in the district court's determination that the parties did not reach a binding settlement agreement.

II. The district court properly confirmed the referees' partition report.

Brent argues that the district court (1) lacked the authority to confirm the referees' report and (2) erred in refusing to set aside the report and remand the matter to the referees. Brent asks this court to reverse and remand "with instructions to allow Brent and Brenda an opportunity to speak with the referees regarding the partition."

An action to partition real property is governed by chapter 558 of the Minnesota Statutes. Chapter 558 and the accompanying caselaw provide multiple ways by which a partition action may be resolved including, but not limited to, partition in kind, Minn. Stat. § 558.01 (2022), partition in kind with compensation, Minn. Stat. § 558.11 (2022), and partition by private or public sale, Minn. Stat. §§ 558.14, .17 (2022). "Although the statutory procedure must be followed, once the [district] court has taken jurisdiction of the case it may exercise its general equitable powers to effect the most advantageous plan which the nature of the particular case admits." *Carlson v. Olson*, 256 N.W.2d 249, 255 (Minn. 1977); *Swogger v. Taylor*, 68 N.W.2d 376, 383 (Minn. 1955). When considering the referees' report, a district court "may confirm or set aside the report, and, if necessary, appoint new referees." Minn. Stat. § 558.07 (2022).

"A district court's decisions regarding the division of assets in a partition proceeding are within its discretion and should not be reversed absent an abuse of that discretion." *Glenwood Inv. Props., L.L.C. v. Carroll A. Britton Fam. Tr.*, 765 N.W.2d 112, 117 (Minn. App. 2009).

On April 20, 2022, the day after Brent filed his notice of appeal in the first consolidated case, the parties stipulated to the district court's appointment of three partition

referees. The referees and counsel for parties participated in a conference call to discuss the work of the referees and to determine the information the referees needed to make an equitable division of the property. Brent's counsel submitted a letter to the appointed referees on May 12, 2022, that explained Brent's position regarding the equitable partition of the property. Brenda's counsel did the same.

On September 15, 2022, the referees submitted their partition report explaining the equitable division of the property between Brenda and Brent and indicating that they reviewed "county assessment records," aerial photos, farm records, "private tile maps, county tile maps, soils maps[,] and productivity indexes along with the 2018 land appraisal." The referees also "inspected the property on several occasions during the growing season to determine the quality of the cropland and if there were any noticeable drainage issues." The referees determined the following to be an equitable partition of the farmland:[4]

BRENT		
Site Name	Total Acres	Tillable
Hog Farm	159.74	158.28
Kermeens	37.42	34.72
Domes	179.63	175.95
1/2 of Jacks	38.275	37.49
	415.065	406.44

BRENDA		
Site Name	Total Acres	Tillable
Whitlows	146.99	140.02
Northwicks	158.95	154.21
Brush Creek	70.55	68.55
1/2 of Jacks	38.275	37.49
	414.765	400.27

[4] The partition referees developed the graphic shown.

Brenda filed a motion to confirm the referees' report. Brent opposed confirmation of the recommended partition, asserting that the referees' recommended division was unequal and failed to consider that he planted the Northwicks Farm with alfalfa, which is a five-year crop that is expensive to plant due to the costs of seed and fertilizer, in spring 2022.

In the December 6, 2022 order and judgment, the district court determined that it maintained authority to confirm the referees' partition report because Brent did not appeal from the order appointing the referees. The district court further reasoned that, assuming Brent's request was interpreted as a request to set aside the report, Brent had "not made a sufficient showing to justify that relief."

District Court's Authority to Confirm Partition Report

Brent argues that the district court lacked authority to confirm the referees' report during the pending first appeal based on (1) Minn. R. Civ. P. 108.01 and (2) Minn. Stat. § 525.714 (2022) ("The appeal shall suspend the operation of the order, judgment, or decree appealed from until the appeal is determined or the court of appeals orders otherwise."). We are not persuaded.

First, neither party challenged in the first appeal the district court's directive to partition the property. Moreover, the referees' report simply divides the land equitably between the parties; it does not address how mother's will impacts the trust's interest in the property or the amount of rent owed, which were issues in the first appeal. Therefore, pursuant to Minn. R. Civ. P. 108.01, the district court retained authority to confirm the

referees' report because it was "independent of, supplemental to, or collateral to the order or judgment appealed from." Minn. R. Civ. P. 108.01, subd. 2.

Second, the applicability of Minn. Stat. § 525.714, which addresses the operation of an appealed order in a probate proceeding, is not briefed by the parties with citation to authority. Because it is inadequately briefed, we decline to reach this argument. *See State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue).

District Court's Confirmation of Partition Report

Brent next asserts that the district court erred by failing to set aside (or, as articulated by Brent, remand) the referees' report. We first consider the extent to which a district court must defer to referees in a partition action. In *Neumann v. Anderson*, we quoted A.C. Freeman, *Cotenancy and Partition* (2d ed. 1886), for the following guidance:

> But where the [district c]ourt is asked to set aside the action of the [referees], on the ground that they erred in making their allotments, whereby an unequal partition has been made, it will not grant the relief asked except in extreme cases—cases in which the partition is based on wrong principles, or it is shown by a very clear and decided preponderance of evidence that the [referees] have made a grossly unequal allotment.

916 N.W.2d 41, 50-51 (Minn. App. 2018), *rev. denied* (Minn. July 17, 2018).

For this reason, "[a]n application to set aside a referees' report is usually considered as analogous to a motion for a new trial, and the report as entitled to the same force and effect as the verdict of a jury or a finding made by the court." *Id.* at 51-52 (quoting *Robbins v. Hobart*, 157 N.W. 908, 909 (Minn. 1916)). In considering a motion for a new trial, a district court is not "free to set aside a jury verdict whenever it is displeased or dissatisfied

with the result of the jury's deliberations." *Koenig v. Ludowese*, 243 N.W.2d 29, 30 (Minn. 1976). Therefore, a district court should deny a motion for a new trial if "the preponderance of the evidence fails to suggest clearly jury mistake, improper motive, bias, or caprice" or if there are "no expressed and articulable reasons, based upon demonstrable circumstances or events, which support a conclusion that injustice has been done." *Id.* at 31. "Likewise, a referees' report in a partition action may be set aside if it is shown by a very clear and decided preponderance of evidence that the [referees] have made a grossly unequal allotment." *Neumann*, 916 N.W.2d at 52 (quotation omitted).

Brent attempts to support his argument that the district court erred by failing to set aside the referees' partition report by pointing to (1) the lack of express consideration of party submissions in the referees' report, and (2) statements purportedly made by the referees after the filing of the partition report, as described in the parties' conflicting affidavits. Those statements relate to a claimed lack of knowledge by one referee about Brent's planting of alfalfa and claimed misunderstanding of two referees as to whether they were prohibited from contacting Brent and Brenda.

As to Brent's first point, he cites to no law, and we are aware of none, which obligates a referee to explicitly reference a party's submission as part of a final report. *See Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) ("It is well to bear in mind that on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal." (Quotation omitted)).

As to Brent's second point, the district court determined that "[t]here is no indication the referees acted with improper motive, bias or caprice and the report contains sufficient

findings to demonstrate the referees' reasoning for making their recommendation." Specifically, the district court determined that Brent did "not suggest that the referees' report [had] resulted in a grossly unequal allotment" and, instead, "[h]e simply ha[d] a different division of property that he believes is more equitable in light of his farming practices." The record supports the district court's determination. Even if we assume additional facts might change the partition, the possibility of a different partition does not "show[] by a very clear and decided preponderance of evidence that the [referees] have made a grossly unequal allotment." *Neumann*, 916 N.W.2d at 52 (quotation omitted). The district court did not err in confirming the report.

Affirmed.