

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A23-1242**

Mike Allen Homes, LLC,  
Appellant,

vs.

Matthew Alan Hiley, et al.,  
Respondents.

**Filed July 29, 2024  
Affirmed in part, reversed in part, and remanded  
Wheelock, Judge**

Olmsted County District Court  
File No. 55-CV-18-7093

David L. Liebow, James A. Godwin, Godwin Dold, Rochester, Minnesota (for appellant)

James McGeeney, Daniel P. Doda, Doda McGeeney, Rochester, Minnesota (for respondents)

Considered and decided by Wheelock, Presiding Judge; Cochran, Judge; and Ede, Judge.

**NONPRECEDENTIAL OPINION**

**WHEELOCK, Judge**

In this breach-of-contract dispute arising from a home-remodeling project, appellant contractor challenges the district court's award of damages, arguing that the district court abused its discretion by effectively granting respondent homeowners a new trial on the issue of damages. Because we conclude that the district court impermissibly granted a new

trial on the issue of damages, we reverse in part. By notice of related appeal, respondents argue that the district court (1) clearly erred by dismissing their slander-of-title claim and (2) abused its discretion by not awarding them prejudgment interest. Because the district court did not clearly err when it dismissed respondents' slander-of-title claim, we affirm in part, but because the district court did not make findings for this court to review regarding prejudgment interest, we remand that issue.

## FACTS

Appellant Mike Allen Homes LLC (MAH), owned by Mike Allen, entered into a remodeling agreement with respondents Matthew and Shannon Hiley in September 2016. Allen has roughly 30 years of experience in the construction industry. The Hileys decided to remodel their home to better accommodate their daughter's needs and hired MAH because Matthew Hiley, a professional painter, had worked with Allen on other projects. The parties entered into a remodeling agreement that included a warranty that MAH's work "shall be done in a professional and workmanlike manner" and a prelien notice pursuant to Minn. Stat. § 514.011, subd. 1 (2022).<sup>1</sup> The agreement identified the project cost and indicated that the Hileys would make three payments to MAH: one at the start of the project, one at the midpoint, and one final payment that would be due upon completion of the project.

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<sup>1</sup> This court cites the most recent version of Minn. Stat. § 514.011 because it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case"). For the same reason, we cite the current versions of other statutes in this opinion.

Construction began in December 2016, and the Hileys made the first two payments as planned. In July 2017, MAH sent the final invoice for \$18,065.25 to the Hileys. At the walkthrough in August, the Hileys raised concerns to Allen about “incomplete work” and “defects.” Allen completed some repairs to address the Hileys’ concerns, but the Hileys requested that Allen return for another walkthrough in September. At the September walkthrough, the Hileys presented Allen with a “punch list” of defects that included items such as missing siding, bubbled flooring, dirty floors and vents, and water damage. A few days later, Allen emailed the Hileys, asking them to deposit the final payment into the escrow account and stating that he would complete the punch list that afternoon.

At the beginning of October, the Hileys had not made the final payment and Allen had not completed the repairs; thus, Allen sent another email, stating, “Punch lists don’t have the grounds to withhold contracting fees.” He explained that, after the Hileys deposited the final payment into the escrow account, he would then schedule work to finish “the remaining punch list items.” Allen also stated that “if there isn’t a payment plan set into action by Friday [he would] start the lien process.” In October, the Hileys updated their punch list and identified problems in multiple areas that MAH had remodeled in their home. Allen testified at trial that he did not complete the punch list and that he planned to leave it incomplete until the Hileys paid the remaining balance. Matthew Hiley testified at trial that he refused to pay the final invoice “because nothing was getting done, so we wanted work done before we [made] payment.” Eventually, the Hileys hired others to repair some of the defects from MAH’s work and to complete portions of the project,

including relocating and burying an exposed gas line at a cost of \$200.23 and moving an electric meter to an accessible location at a cost of \$1,500.

In January 2018, MAH filed a mechanic's lien statement<sup>2</sup> related to the Hileys' property for \$18,062.78, the amount listed on the final invoice. MAH never foreclosed on this lien. When the Hileys refinanced their home a few months later, they obtained a five-year balloon loan with a five and one-half percent interest rate and closing costs of \$32,218.51; they assert that the existence of the lien increased the cost of refinancing. In comparison, when the Hileys refinanced their home in 2020 without the lien on their property, they obtained a three percent interest rate on their loan with closing costs of \$11,626.33.

#### *Procedural Posture*

In October 2018, MAH filed a complaint in district court alleging breach of contract, unjust enrichment, and defamation. The same day, the Hileys filed an answer asserting several affirmative defenses and counterclaims for breach of contract, breach of statutory warranties, negligence, declaratory relief, and slander of title.<sup>3</sup> Following an unsuccessful

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<sup>2</sup> Any contractor or subcontractor who has provided work or material to improve real property has a mechanic's lien against the improved property to secure payment on any outstanding amounts owed. Minn. Stat. §§ 514.01-.03 (2022).

<sup>3</sup> In December 2021, the parties stipulated to a dismissal of their outstanding claims and defenses not addressed at trial. MAH dismissed its business-defamation claim with prejudice. The Hileys dismissed their counterclaims for negligence and declaratory relief as well as their affirmative defenses with prejudice; however, they dismissed their breach-of-statutory-warranties claim without prejudice.

attempt at mediation and delays caused by the COVID-19 pandemic, the district court held a bench trial in March 2021.

### *March 2021 Trial*

At the March 2021 bench trial, both MAH's and the Hileys' experts testified that they observed code violations at the Hileys' property and that MAH did not complete the project. One of the Hileys' witnesses at trial, Steven Buss, had prepared an estimate of the cost to finish the work on the Hileys' property in 2019; he adjusted the estimate before trial in 2021 to reflect increased costs due to inflation.

After both parties rested, the district court directed the parties to submit closing arguments in writing as well as proposed findings of fact and conclusions of law. The Hileys' submission proposed a conclusion of law that awarded them prejudgment interest pursuant to Minn. Stat. § 549.09 (2022) and a damages award that included Buss's 2021 estimate of the total cost to finish the project. But the evidence submitted at trial did not include a breakdown that showed the costs associated with individual line items in that estimate.

In January 2022, the district court issued its findings of fact, conclusions of law, and order (January 2022 order), in which it determined that MAH materially breached the remodeling agreement, excusing any future performance from the Hileys. The district court thus dismissed MAH's contract and unjust-enrichment claims. The district court found that the Hileys had proved damages of \$22,600 for the construction of a new well and \$1,700.23 for the amount they paid to bury the gas line and move the electric meter. As to the damages identified in Buss's 2021 estimate, the district court found that the

evidence in the record “does not allow for the court to make a determination as to work to be completed and the appropriate cost for the same.” The district court stated that, although it “received an exhibit detailing Mr. Buss’s estimated costs of repair,” the parties did not elicit testimony “that would assist the court in understanding the exhibit.” The district court further stated that it “must determine the specific repair that must be made and the corresponding cost for the same” and that it could not do so “based on the limited evidence in the record.” The district court also found that, at the time the breach occurred, the Hileys owed an outstanding balance of \$3,293.92 on the agreement.

The district court thus determined that MAH owed the Hileys damages for the cost of the new well and the amount that the Hileys paid for the gas-line and electric-meter work but that the damages owed for all other repairs would have to “come before the court for further proceedings.” The district court then directed the parties to participate in mediation to resolve any outstanding issues on damages, stating, “Judgment shall enter after the court issues supplemental findings of fact, conclusions of law, and order on the issue of damages for all other repairs.” The district court’s order also dismissed the Hileys’ claim for slander of title.

The district court administrator entered judgment on the order, but the district court quickly vacated it as an error. The parties’ attempt to resolve the remaining damages issues was unsuccessful, and they notified the district court in March 2022 that mediation had failed.

### *April 2023 Proceedings*

In October 2022, the Hileys contacted the district court to schedule further proceedings, and the court scheduled additional proceedings for April 2023. At the outset of these proceedings, the district court identified their scope by stating, “This is to provide you an opportunity to clarify the dollar amounts associated with the repair work that the Court has identified failed to meet the workmanlike standard pursuant to the findings that I issued.” The district court then received additional testimony from Buss and a new exhibit with updates to Buss’s 2019 estimate reflecting the anticipated costs of completing the work on the Hileys’ property in 2023.

At the start of the Hileys’ direct examination of Buss, MAH asserted, for the first time, a “standing objection under 59.05 and 59.01.” The district court overruled MAH’s objection, stating:

You’ve not filed the appropriate motion before the Court. You had a pretrial, you had an opportunity to address anything that you think the Court ought to consider for conducting this second stage of this second trial. Judgment hasn’t entered. You’re referencing rules that apply when a judgment has been issued by the court.

The district court then observed that months had passed since it issued the January 2022 order, during which MAH had “more than sufficient time to address whatever it is” that MAH was objecting to, but it had “failed to do so.”

The district court concluded these proceedings by again directing the parties to submit proposed findings of fact and conclusions of law. The Hileys again proposed that the district court grant them prejudgment interest on the full damages award, which had

begun to accrue in October 2018 when they filed their counterclaims against MAH. MAH proposed that the district court enter judgment on the January 2022 order but that it first amend the order to dismiss the Hileys' breach-of-contract claim for failure to prove damages. MAH argued that, pursuant to Minnesota Rules of Civil Procedure 59.01 and 59.05, the April 2023 proceedings amounted to an impermissible "sua sponte half day court trial . . . regarding damages."

In June 2023, the district court issued its supplemental findings of fact, conclusions of law, order, and judgment (June 2023 order). In its order, the district court found that the Hileys were entitled to damages for the repair work in the amount they would have been if established at the 2021 trial, less the \$3,293.92 outstanding balance on the contract the Hileys still owed, making the Hileys' final award \$34,188.48. The order does not address the Hileys' prejudgment-interest request. The district court then entered judgment on the January 2022 order in August 2023.

MAH and the Hileys appeal.

## **DECISION**

MAH argues that the Hileys are not entitled to any damages that they did not prove at the March 2021 trial because what the district court referred to as a continued trial was in fact a new trial that the district court granted sua sponte in violation of Minnesota Rules of Civil Procedure 59.01 and 59.05. By notice of related appeal, the Hileys argue that the district court erred by (1) denying their slander-of-title claim and (2) not ruling on their request for prejudgment interest pursuant to Minn. Stat. § 549.09, subd. 1. We address each argument in turn.

**I. The April 2023 proceedings were a new trial that exceeded the grounds enumerated in Minnesota Rule of Civil Procedure 59.01.**

MAH argues that, because the January 2022 order stated that the Hileys failed to prove their damages, the proceedings in April 2023 were a new trial and the district court should have determined that the Hileys could receive only damages proved at the initial trial. To support its argument that the April 2023 proceedings amounted to a “second bite at the apple,” MAH relies on Minnesota Rule of Civil Procedure 59.01, which outlines the grounds for a new trial and does not include failure to prove damages as grounds for a new trial.

The Hileys contend that the April 2023 proceedings fell within the district court’s discretion to manage a trial, including to control the mode and order of the presentation of evidence pursuant to Minnesota Rules of Evidence 611 and 614. They also argue that, because the January 2022 order did not result in a final judgment, the April 2023 proceedings cannot be considered a new trial.

**A. The April 2023 proceedings were a new trial and not a form of trial management.**

We review a district court’s management of a trial for an abuse of discretion. *Lundman v. McKown*, 530 N.W.2d 807, 829 (Minn. App. 1995), *rev. denied* (Minn. May 31, 1995). Minnesota Rule of Evidence 611(a) allows district courts “reasonable control over the mode and order of interrogating witnesses and presenting evidence.” In addition, a district court may question witnesses itself, Minn. R. Evid. 614(b), and has the discretion to permit a party to reopen their case to present additional evidence, including testimony, *King v. Larsen*, 235 N.W.2d 620, 621 (Minn. 1975). We also note, however,

that a plaintiff “bears the burden of proving damages caused by the defendant by a fair preponderance of the evidence.” *Canada by Landy v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997).

We are not persuaded that the district court simply extended the trial when it held the April 2023 proceedings. Although the district court did not enter an order for a new trial or directly enter judgment on the January 2022 order, both parties rested their cases at the end of the March 2021 trial and submitted proposed findings of fact and conclusions of law. Moreover, the district court issued findings of fact and conclusions of law in its January 2022 order.

A nonprecedential opinion, *ARF, LLC v. SAMS Enterprises, LLC*,<sup>4</sup> is persuasive here. No. A19-0718, 2020 WL 290454, at \*1 (Minn. App. Jan. 21, 2020). In that case, the district court received “evidence of repair costs as well as a capitalization rate analysis” to prove damages, but ARF “did not offer evidence of out-of-pocket damages,” which is required to recover damages on a misrepresentation claim. *Id.* at \*2. After receiving proposed findings of fact and conclusions of law, the district court issued its final order and judgment, but then it also issued an order sua sponte granting a new trial for ARF “limited to presenting evidence regarding the proper measure of damages.” *Id.* at \*1. We reversed the district court’s order, concluding that, in the initial proceedings, “ARF failed to prove a necessary element of its misrepresentation claim” and that the district court

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<sup>4</sup> “Nonprecedential opinions . . . may be cited as persuasive authority.” Minn. R. Civ. App. P. 136.01, subd. 1(c).

abused its discretion when it tried to remedy this error through a new trial or extended proceedings. *Id.* at \*3.

The circumstances here are similar to those in *ARF*. In both cases, the district court conducted a full trial, received proposed findings of fact and conclusions of law from the parties, issued an order with findings of fact and conclusions of law, and then conducted additional proceedings sua sponte to receive more evidence on damages not proved in the first proceeding. Notwithstanding that the district court here included the descriptor “supplemental” in the caption for the June 2023 order and that neither party provided closing arguments after the April 2023 proceedings, the facts are analogous to those in *ARF* and demonstrate that the district court’s actions were not a mere exercise in trial management. Therefore, we conclude that the April 2023 proceedings did not fall within the district court’s discretion to manage a trial but instead were a new trial that the district court ordered sua sponte. Having concluded that the district court conducted a second trial on damages, we next consider whether the district court abused its discretion by granting the new trial on the Hileys’ damages.

**B. The April 2023 proceedings were an impermissible new trial.**

Appellate courts review a district court’s decision to grant a new trial for an abuse of discretion. *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). We review questions of law de novo, including the interpretation of rules of civil procedure. *Barrera v. Muir*, 553 N.W.2d 104, 108 (Minn. App. 1996), *rev. denied* (Minn. Oct. 29, 1996). It is an abuse of discretion to grant a new trial when there are not grounds for a new trial.

*Vadnais v. Am. Fam. Mut. Ins. Co.*, 243 N.W.2d 45, 48 (Minn. 1976) (“A trial court does not have discretion to employ an erroneous rule of law in ordering a new trial.”).

Under Minnesota Rule of Civil Procedure 59.05, a district court may grant a new trial sua sponte. However, the grounds for granting a new trial are limited to those enumerated in rule 59.01. *Clifford v. Geritom Med., Inc.*, 681 N.W.2d 680, 686 (Minn. 2004). A district court “ha[s] no power to grant a new trial for a cause not enumerated by the rules,” and any order granting a new trial outside these enumerated grounds is “ineffective and void.” *Ginsberg v. Williams*, 135 N.W.2d 213, 221 (Minn. 1965).

Rule 59.01 provides:

A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes:

(a) Irregularity in the proceedings of the court, referee, jury, or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial;

(b) Misconduct of the jury or prevailing party;

(c) Accident or surprise which could not have been prevented by ordinary prudence;

(d) Material evidence newly discovered, which with reasonable diligence could not have been found and produced at the trial;

(e) Excessive or insufficient damages, appearing to have been given under the influence of passion or prejudice;

(f) Errors of law occurring at the trial, and objected to at the time or, if no objection need have been made pursuant to Rules 46 and 51, plainly assigned in the notice of motion;

(g) The verdict, decision, or report is not justified by the evidence, or is contrary to law; but, unless it be so expressly stated in the order granting a new trial, it shall not be presumed, on appeal, to have been made on the ground that the verdict, decision, or report was not justified by the evidence.

Minn. R. Civ. P. 59.01. These enumerated grounds do not permit a district court to order a new trial so that a party may present additional evidence on damages because they did

not prove their damages at the initial trial. *See ARF*, 2020 WL 290454, at \*3. Again, we are persuaded that the circumstances here are similar to those in *ARF* because the district court extended the proceedings for the express purpose of allowing the Hileys another opportunity to prove their damages after they failed to adequately prove their damages at the first trial. This is not permitted by the rules of civil procedure. Because the district court did not hold the new trial pursuant to any of the grounds enumerated in rule 59.01, we conclude that the district court abused its discretion when it conducted the April 2023 proceedings.

The district court determined in its January 2022 order that, although the Hileys proved their breach-of-contract claim, the only damages they proved sufficiently were related to the well, the gas line, and the electric meter. As to other damages the Hileys claimed, the district court stated that it was unable to “determine the specific repair that must be made and the corresponding cost for the same” “based on the limited evidence in the record.” We therefore reverse the June 2023 order for judgment.

**II. The district court did not clearly err when it dismissed the Hileys’ slander-of-title claim.**

In their cross-appeal, the Hileys first argue that the district court clearly erred when it dismissed their slander-of-title claim.

We will not set aside the district court’s findings of fact unless they are clearly erroneous, and to be clearly erroneous, the findings must be unsupported by the evidence. *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 710 (Minn. App. 2007), *rev. denied*

(Minn. Mar. 18, 2008). To succeed in a slander-of-title claim, a plaintiff must prove the following:

- (1) That there was a false statement concerning the real property owned by the plaintiff;
- (2) That the false statement was published to others;
- (3) That the false statement was published maliciously; and
- (4) That the publication of the false statement concerning title to the property caused the plaintiff pecuniary loss in the form of special damages.

*Paidar v. Hughes*, 615 N.W.2d 276, 279-80 (Minn. 2000). “The filing of an instrument known to be inoperative is a false statement that, if done maliciously, constitutes slander of title.” *Id.* at 280.

The Hileys argue that (1) spelling errors rendered the prelien notice defective and MAH issued a false statement when it requested an excessive amount in the mechanic’s lien statement; (2) Allen acted with malice because he filed the lien statement even though the prelien notice was defective and because he knew that the lien would affect the Hileys’ ability to refinance their home; and (3) the Hileys suffered pecuniary loss because the higher interest rate on the loan and additional closing costs associated with their refinancing of the property cost them an additional \$14,894.29.

The district court dismissed the Hileys’ slander-of-title claim because it determined that the spelling errors in the prelien notice did not render it ineffective; MAH did not overstate the amount of the lien because the parties’ conduct demonstrated that they each believed at least \$18,000 of the contract price remained unpaid; and the Hileys did not present evidence to support their assertion that MAH acted with malice. MAH agrees with the district court, arguing that (1) the Hileys cannot prove that MAH made false statements

because spelling errors do not make the prelien notice inoperative and the Hileys never objected to the amount claimed in the mechanic's lien statement and (2) the Hileys cannot prove that Allen acted with malice because their arguments are speculative and unsupported by the record.

We need not decide whether the spelling errors in the prelien notice made the notice defective or whether the amount claimed in the lien constituted a false statement, because the district court did not clearly err when it determined the Hileys did not prove that Allen acted with malice. "The element of malice requires a reckless disregard concerning the truth or falsity of a matter despite a high degree of awareness of probable falsity or entertaining doubts as to its truth." *Brickner*, 742 N.W.2d at 711-12 (quotation omitted). In *Brickner*, we affirmed the district court's finding that a party acted with malice for the purpose of a slander-of-title claim when evidence demonstrated that the defendant "knew when he filed a notice of adverse claim against the property that he no longer held an interest in the property." *Id.* at 712. And in an instructive, nonprecedential case, we affirmed the district court's finding of malice for the purpose of a slander-of-title claim when the record included evidence that the defendant "knowingly inflated the amounts on its invoices, and in turn knowingly employed a person with little knowledge of mechanic's liens to prepare them." *LeMaster Constr., Inc. v. Woeste*, No. A08-0956, 2009 WL 1048194, at \*3 (Minn. App. Apr. 21, 2009).

The record supports the district court's conclusion that MAH did not act with malice. First, MAH provided the Hileys with options and an opportunity to make the final payment before it filed the mechanic's lien statement, and second, the amount that MAH

listed on the lien statement matched the amount listed on MAH's final invoice to the Hileys. Additionally, the emails in September and October 2017 demonstrate that the Hileys never objected to the amount MAH identified as outstanding in the final invoice. Although MAH may have known that a lien can affect refinancing terms, the record supports the district court's finding that MAH believed the Hileys owed the amount identified in the lien statement. Because the Hileys cannot prove the malice element of their claim, the district court did not clearly err when it dismissed their slander-of-title claim, and we affirm this part of the district court's January 2022 order.

**III. Because the district court did not make findings on the issue of prejudgment interest, we cannot review it.**

The Hileys argue second that the district court abused its discretion when it did not award them prejudgment interest pursuant to Minn. Stat. § 549.09. MAH responds that, notwithstanding that the Hileys received a monetary award, neither party prevailed because both parties asserted claims on which they did not succeed. In reply, the Hileys argue that, because they had the better outcome, they are the prevailing party and the district court should have awarded them prejudgment interest. The district court did not address the Hileys' request for prejudgment interest in its January 2022 or its June 2023 order. However, we note that the district court mentioned a prejudgment-interest award during the April 2023 proceedings, and at that time, the Hileys stated their belief that they were entitled to prejudgment interest.

The relevant portion of the prejudgment-interest statute states:

(a) When a judgment or award is for the recovery of money, including a judgment for the recovery of taxes, interest

from the time of the verdict, award, or report until judgment is finally entered shall be computed by the court administrator or arbitrator as provided in paragraph (c) and added to the judgment or award.

(b) . . . The prevailing party shall receive interest on any judgment or award from the time of commencement of the action or a demand for arbitration, or the time of a written notice of claim[.]

Minn. Stat. § 549.09, subd. 1(a)-(b). Before awarding prejudgment interest, the district court must first determine a prevailing party. *See id.*, subd. 1(b) (“The prevailing party shall receive interest on any judgment or award . . .”). Appellate courts review a district court’s determination of a prevailing party for an abuse of discretion. *See In re Will of Gershcov*, 261 N.W.2d 335, 340 (Minn. 1977) (“A court sitting as a court of equity, in its discretion, may determine which party is the prevailing party.”).

To determine the prevailing party, the district court considers “who has, in the view of the law, succeeded in the action.” *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998) (quoting *Haugland v. Canton*, 84 N.W.2d 274, 280 (Minn. 1957)). The district court does not have to determine a prevailing party. *See Ernster v. Scheele*, 895 N.W.2d 262, 265 (Minn. App. 2017) (“The district court has ‘discretion to determine which party, if any, qualifies as a prevailing party.’” (quoting *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54-55 (Minn. 1998))).

“[A]n undecided question is not usually amenable to appellate review.” *Hoyt Inv. Co. v. Bloomington Com. & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988); *see Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only those questions previously presented to and considered by the district court).

And given that the statute *requires* that a prevailing party receive prejudgment interest, Minn. Stat. § 549.09, subd. 1(a)-(b), we cannot review the district court's decision not to award prejudgment interest unless the district court first decides whether any party has prevailed in this matter. We therefore remand this issue for the district court to determine in the first instance whether one of the parties here is a prevailing party, and if so, to compute and award the prejudgment interest.

In sum, we reverse the June 2023 order for judgment awarding breach-of-contract damages proved at the second trial. Judgment in this matter will be in accordance with the findings of fact and conclusions of law in the January 2022 order. We affirm the district court's dismissal of the Hileys' slander-of-title claim and remand for the district court to decide whether either party is the prevailing party, and if there is a prevailing party, to calculate and award prejudgment interest.

**Affirmed in part, reversed in part, and remanded.**