

*This opinion is nonprecedential except as provided by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
A23-1633**

Demo Unlimited Incorporated, et al.,
Respondents,

vs.

Ross Peterson,
Appellant.

**Filed July 29, 2024
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CV-21-11526

Matthew R. Hartranft, Matthew R. Doherty, Alexander D. Schwartz, Brutlag, Trucke & Doherty, P.A., Plymouth, Minnesota (for respondents)

Ross Peterson, Stillwater, Minnesota (self-represented appellant)

Considered and decided by Ross, Presiding Judge; Reyes, Judge; and Smith, John, Judge.*

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges the district court's declaratory judgment that he had no interest in respondent-corporation, arguing that he should receive a new trial because (1) procedural

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

irregularities adversely impacted his trial rights; (2) newly discovered evidence discredits the district court's findings; and (3) the evidence does not support the district court's decision. Alternatively, appellant argues that the district court should have amended certain factual findings that he asserts are not supported by the record. We affirm.

FACTS

In November 2002, two brothers, appellant Ross Peterson and respondent Erik Peterson, incorporated respondent Demo Unlimited, Inc. (Demo), with each brother assuming 50% ownership of the corporation. In 2007, Ross and Erik¹ reached an oral agreement under which Ross would receive \$100,000 in exchange for his interest in Demo (the agreement). Following the agreement, Ross continued to work for Demo from 2007 to 2018, during which time he received a salary, benefits, and a series of 25 disputed payments that totaled \$117,000. The last payment Ross received was a \$20,000 check with a memo reading "Final Payment." Believing that the disputed payments were redemption payments that satisfied his obligation under the agreement, Erik demanded that Ross transfer his remaining stock shares in Demo. Ross refused, arguing that the disputed payments were not made to redeem his interest in Demo, but to reimburse him for services he provided to Demo.

Erik and Demo (collectively, respondents) brought an action against Ross in which they sought, in part, a declaratory judgment that (1) an enforceable redemption agreement existed between Ross and respondents; (2) the 25 disputed payments to Ross satisfied

¹ Because Ross and Erik share the same last name, we use their first names when referring to them individually.

Erik's obligations under the agreement; and (3) Erik was now the sole shareholder of Demo. The case proceeded to a court trial beginning in November 2022.

At trial, the district court received numerous exhibits documenting the parties' financial transactions and heard testimony from Erik, Ross, Ross's wife, and several Demo employees. Following trial, the district court granted respondents' requested declaratory relief, determining that the parties had an enforceable agreement, that Ross was no longer a Demo officer following the agreement, and that Ross had surrendered his interest in Demo by accepting \$104,000 in redemption payments. Ross filed a motion for a new trial under Minn. R. Civ. P. 59.01 or amended findings under Minn. R. Civ. P. 52.02, which the district court denied.

This appeal follows.

DECISION

I. The district court did not abuse its discretion by denying Ross's motion for a new trial.

Self-represented on appeal, Ross incorporates by reference and supplements the arguments made by his counsel in the motion for a new trial or amended findings filed in district court. Ross argues that he should be granted a new trial under Minn. R. Civ. P. 59.01 because (1) procedural irregularities adversely impacted his trial rights; (2) newly discovered evidence shows that he did not agree to surrender his interest in Demo; and (3) the evidence does not support the district court's findings and ultimate determination. *See* Minn. R. Civ. P. 59.01 (a), (d), (g). We address each argument in turn.

Motions for a new trial should be granted “cautiously and sparingly” by a district court. *Baker v. Amtrak Nat’l R.R. Passenger Corp.*, 588 N.W.2d 749, 753 (Minn. App. 1999). Because the district court “has the feel of the trial,” we generally defer to its “broad discretion in deciding whether to grant a new trial.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotation omitted).

A. The district court did not commit any procedural irregularities warranting a new trial.

Ross appears to contend that the district court committed numerous procedural irregularities throughout his trial, including (1) relying on excluded evidence in its order granting declaratory relief to respondents; (2) failing to “recognize the respondents as separate entities;” (3) allowing respondents to change legal theories without filing a motion to amend under Minn. R. Civ. P. 15.02; and (4) committing judicial misconduct by demonstrating bias in favor of respondents. We are not persuaded.

Under Minn. R. Civ. P. 59.01(a), a moving party may receive a new trial if an “[i]rregularity in the proceedings of the court . . . or any order or abuse of discretion” deprived that party of a fair trial. An irregularity is defined as a “failure to adhere to a prescribed rule or method of procedure not amounting to an error in a ruling on a matter of law.” *Boschee v. Duevel*, 530 N.W.2d 834, 840 (Minn. App. 1995) (quotation omitted), *rev. denied* (Minn. June 14, 1995).

As an initial matter, the only irregularity addressed by Ross’s motion for a new trial was that the district court’s order improperly relied on excluded evidence. As a result, Ross’s remaining irregularity arguments are forfeited on appeal. *Sauter v. Wasemiller*, 389

N.W.2d 200, 201 (Minn. 1986) (“A post-trial motion for a new trial [under] Minn. R. Civ. P. 59.01 raising individual errors allegedly occurring at trial is a prerequisite to appellate review of those errors.”).²

Ross’s remaining argument is that the district court could not have made certain factual findings without relying on exhibits listing Demo’s shareholder distributions that were offered, but not admitted, into evidence. The challenged findings include the district court’s summary of the payments Ross received under the agreement and its finding that there was no imbalance between the distributions Erik and Ross received before the agreement between 2006 and 2007.

We conclude that the district court did not need to rely on excluded evidence when issuing its findings of fact. Ross testified that he received each of the payments listed in the district court’s findings and the district court therefore did not need to rely on the excluded exhibits for that information. Additionally, Erik testified that he and Ross received approximately the same distributions from Demo before the agreement and that he had worked with Demo’s tax consultant to ensure that there was no discrepancy in Demo’s distributions to himself and Ross. *See Butler v. Jakes*, 977 N.W.2d 867, 871 (Minn. App. 2022) (“We defer to the district court’s credibility determinations . . .”). Because ample evidence beyond the excluded exhibits supports the district court’s findings, Ross’s argument fails.

² For this same reason, Ross has forfeited the argument that the district court misinterpreted the powers of corporate shareholders under Minn. Stat. chapter 302A (2022).

B. There is no newly discovered evidence warranting a new trial.

Ross argues that newly discovered evidence in the form of bank loans obtained on Demo's behalf, for which he was a signatory, proves that he was not removed as an officer following the agreement and that he did not agree to transfer his interest in Demo. Ross's argument is unavailing.

A district court may grant a new trial based on newly discovered evidence if the new evidence (1) is "material" and (2) "with reasonable diligence could not have been found and produced at the trial." Minn. R. Civ. P. 59.01(d). Determining whether these requirements have been met is within the district court's discretion. *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 631 (Minn. 2012).

In his sworn declaration to the district court, Ross stated that, "[a]fter trial and the [district court's] decision in this matter, I attempted to get information about my role in [Demo's] bank loans and accounts with Anchor Bank. Anchor Bank was purchased by Old National Bank." On appeal, Ross claims that, although he was unable to obtain the loan information in his pretrial discovery efforts concerning Old National Bank, he realized after trial that he had not performed any bank-records searches "for Demo Unlimited or loans with his name" and that he was able to acquire the loan documents after performing those searches.

Here, the district court determined that Ross failed to exercise reasonable diligence by not obtaining this evidence before trial. The record supports the district court's determination. Not only did Ross delay searching for the loan information until "[a]fter trial and the [district court's] decision," but he failed to explain why he could not have

searched for the information before trial. *See Henderson v. Bjork Monument Co.*, 24 N.W.2d 42, 46 (Minn. 1946) (noting that new trial is not warranted if “the same diligence which led to the discovery of the new evidence after trial would have discovered it had such diligence been exercised prior thereto”) (quotation omitted). The district court therefore did not abuse its discretion by denying Ross’s motion for a new trial based on newly discovered evidence.³ Minn. R. Civ. P. 59.01(d); *Frazier*, 811 N.W.2d at 631.

C. The district court’s decision is supported by the evidence.

Ross asserts that he should receive a new trial because the evidence presented at trial failed to demonstrate that (1) the parties had an enforceable agreement between them and (2) respondents satisfied their obligations under the agreement. We are not convinced.

A new trial should not be granted for insufficient evidence under Minn. R. Civ. P. 59.01(g) “unless the verdict is so contrary to the preponderance of the evidence as to imply that the [factfinder] failed to consider all the evidence or acted under some mistake.” *Ayers v. Kalal*, 925 N.W.2d 291, 297 (Minn. App. 2019).

³ Ross also failed to provide the loan information to the district court to allow it to determine whether the new evidence was material. *See MacDonald v. Brodkorb*, 939 N.W.2d 468, 474 (Minn. App. 2020) (“We generally will not consider matters outside the record on appeal or evidence not produced and received in the district court.”).

1. The record supports the district court’s finding that the parties entered into an enforceable agreement.

Ross first appears to argue that the parties did not reach an enforceable agreement because they did not agree on the essential term of whether respondents would cover his health-insurance expenses.⁴ We disagree.

To form an enforceable contract, there must be mutual assent between the parties on the contract’s essential elements. *Vermillion State Bank v. Tennis Sanitation, LLC*, 947 N.W.2d 456, 466 (Minn. App. 2020), *aff’d*, 969 N.W.2d 610 (Minn. 2022). Both the existence of a contract and the material terms of that contract are questions of fact to be determined by the factfinder. *Id.* We review findings of fact for clear error and will not reverse the district court unless we are “left with the definite and firm conviction that a mistake has been made.” *Heidbreder v. Carton*, 636 N.W.2d 833, 838 (Minn. App. 2001) (quotation omitted), *aff’d*, 645 N.W.2d 355 (Minn. 2002). The test for contractual formation is objective, “to be judged by the words and actions of the parties and not by their subjective mental intent.” *Hill v. Okay Constr. Co.*, 252 N.W.2d 107, 114 (Minn. 1977).

Here, the record supports the district court’s findings and ultimate determination that the parties entered into an enforceable redemption agreement. Both Ross and Erik testified that they had agreed that Ross would receive \$100,000 in exchange for his interest in Demo and several other witnesses testified that a redemption/buyout agreement existed.

⁴ Ross also contends that his cell-phone bill was an essential term to the agreement. However, even if that were the case, the district court credited Erik’s testimony that he paid Ross’s cell-phone bill until 2018. *See Butler*, 977 N.W.2d at 871.

Witnesses additionally testified that, following the agreement, Ross turned in his company vehicle and no longer took part in the decisionmaking process for Demo, actions that are objectively consistent with the understanding that he was no longer an officer and no longer had an ownership interest. *See Hill*, 252 N.W.2d at 114.

The record also supports the district court's finding that Ross's health insurance was not an essential term to the agreement. Erik testified that Ross's insurance was only covered when Demo could afford to pay it, and Demo did not begin providing health insurance to Ross until over a year after the agreement in May 2008. *See Butler*, 977 N.W.2d at 871. Additionally, even if health insurance was initially a term of the agreement, the record supports the district court's determination that Ross waived the health-insurance term by continuing to accept payments under the agreement until 2018, despite his health-insurance coverage ending in 2009. *See Appollo v. Reynolds*, 364 N.W.2d 422, 424 (Minn. App. 1985) (noting that waiver exists when parties ignore certain contractual provisions while continuing to exercise their contractual rights). Because none of the district court's findings regarding the parties' agreement are clearly erroneous, Ross's argument fails.

2. The record supports the district court's finding that respondents fully performed their agreement obligations.

Ross next appears to argue that, even if an enforceable agreement existed, the evidence presented at trial failed to show that respondents made the disputed payments to satisfy their obligations under the agreement. We disagree.

Ross admitted to receiving each of the disputed payments, which totaled \$117,000. Multiple witnesses, including Erik and Demo's accountant, testified that these payments

were made under the agreement. Furthermore, the district court did not credit Ross's alternative theories for why he received certain payments. *See Butler*, 977 N.W.2d at 871. Although the district court offset \$13,000 of the disputed payments that Erik acknowledged were made to reimburse Ross for expenses, the record demonstrates that respondents paid the remaining \$104,000 to satisfy their obligation under the redemption agreement.

Because the district court's determinations that an agreement existed and that respondents performed their obligations under the agreement are supported by the evidence, the district court acted within its discretion by denying Ross's motion for a new trial under Minn. R. Civ. P. 59.01(g). *Ayers*, 925 N.W.2d at 297.

II. The district court's order denying the motion for amended findings is not appealable.

Ross also appears to challenge the district court's order denying his motion "for . . . amended findings." However, a district court order denying a motion for amended findings is not appealable. *Tompkins v. Sandeen*, 67 N.W.2d 405, 406 (Minn. 1954) ("An appeal will not lie from an order denying a motion for amended findings."). We therefore do not consider Ross's challenge to the portion of the district court's order that denied his motion for amended findings.⁵

Affirmed.

⁵ Even if we were to construe Ross's appeal as one taken from the final judgment, his motion for amended findings challenges many of the same district court findings pertaining to contract formation and performance that were addressed by his motion for a new trial. His argument would therefore fail on its merits for the reasons set forth in Part I.C.