

*This opinion is nonprecedential except as provided by  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  
A24-0001**

Tesfaye Shikur,  
Respondent,

vs.

Eric Halverson, et al.,  
Appellants.

**Filed August 12, 2024  
Affirmed in part and reversed in part  
Wheelock, Judge**

Ramsey County District Court  
File No. 62-CV-19-1170

Chad McKenney, Bradley D. Hendrikson, Donohue McKenney, Ltd., Maple Grove,  
Minnesota (for respondent)

Nathan M. Hansen, Willernie, Minnesota (for appellants)

Considered and decided by Wheelock, Presiding Judge; Ede, Judge; and Halbrooks,  
Judge.\*

**NONPRECEDENTIAL OPINION**

**WHEELOCK, Judge**

In this second appeal from a district court's final judgment in a breach-of-lease  
action, appellants contend that the district court erred by awarding damages that are

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

unsupported by the record and by awarding attorney fees to a non-prevailing party. Because the district court's damages award is not supported by the record, we reverse in part. But because respondent was the prevailing party and appellants do not argue that the attorney-fee award was unreasonable, we affirm in part.

## FACTS

This is the second appeal in this breach-of-lease action brought by respondent Tesfaye Shikur against appellants Erik<sup>1</sup> and Jeffrey Halverson.<sup>2</sup> We discussed the facts of the case fully in the first appeal, *Shikur v. Halverson*, No. A21-0959, 2022 WL 829362 (Minn. App. Mar. 21, 2022). We now focus only on the facts relevant to this appeal.

On February 21, 2015, Shikur purchased the assets of a convenience store that leased space in a building (the property) owned by the Halversons. Shikur paid \$136,882 for the assets and signed a lease agreement with Erik for the property. The lease required that Erik care for and maintain the “roof, exterior walls, and structural foundation” of the property. Approximately three or four months after Shikur began operating the convenience store in 2015, the roof began leaking and continued to do so until early 2019, when Shikur was forced to vacate the property. Shikur's handwritten records indicate that the convenience store operated throughout much of that period. Before he vacated the property, Shikur liquidated

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<sup>1</sup> Erik's name was erroneously spelled “Eric” when the case was filed in the district court. We defer to his preferred spelling.

<sup>2</sup> Jeffrey was dismissed from this action pursuant to our opinion in the first appeal. *See Shikur*, 2022 WL 829362, at \*3 (concluding that the district court erred by holding Jeffrey liable under the lease). The decision and judgment on appeal thus affect only Erik, and although both Halversons appealed, just Erik filed a brief. To avoid confusion, we refer to the individual brothers by their first names.

and sold most of the store’s “stuff.” On February 21, 2019, Shikur sued the Halversons for, among other things, breach of the lease.

The district court held a bench trial. In its initial findings of fact, conclusions of law, and order for judgment, the district court determined that the Halversons had materially breached the lease by failing to repair the roof, thereby excusing Shikur from his obligations under the lease. *Shikur*, 2022 WL 829362, at \*2. It awarded Shikur loss-of-business damages of \$136,882 and security-deposit damages of \$2,300, but specifically concluded that Shikur failed to meet his burden of proof for future damages. *Id.*

The Halversons appealed from the order, arguing in relevant part that the district court’s damages award was erroneous “because there was no evidence presented at trial of the value of the business at or near the time of the breach.” *Id.* at \*5 (quotation marks omitted). We agreed, observing:

Shikur presented no evidence of the value of his business before the breach and after the breach. In fact, the district court failed to explain why Shikur’s business should be valued at the amount he paid for it in 2015 when it also rejected the claim for lost profits for 2016 and 2017. It only seems logical that if the business was not turning a profit in 2017, it would be worth less than Shikur paid for it in 2015. Thus, without any evidence demonstrating the value of Shikur’s business at the time of the breach, a conclusion that it is worth the amount he paid for it is mere speculation.

*Id.* (citation omitted). We also observed that the district court failed to find when the breach occurred, further supporting our conclusion that the district court’s award of damages was an abuse of discretion. *Id.* at \*6. We therefore reversed the district court’s damages award and remanded for the district court to determine

(1) the date of the breach of the lease, (2) the appropriate amount of damages incurred at the time of the breach, which in turn must be based on (3) the value of the business before the breach and

after the breach. Such a valuation of the business must also reflect (as the district court has already determined) that Shikur has not proven future damages (in the form of lost profits).

*Id.*

On remand, the district court determined that the breach occurred on September 9, 2016, 60 days after Shikur provided Erik with written notice of the leak. It found that this was a breach that continued until Shikur was forced to vacate the property in 2019. It determined that, because there was “no evidence in the record of any loss in the business’ value” between the time it was purchased in February 2015 and when the lease was initially breached in September 2016, the value of the business was the same as the initial purchase price: \$136,882. The district court then found that, because the convenience store was rendered inoperable in 2019, forcing Shikur to vacate, the final value of the business was zero dollars. The district court ordered that Erik pay Shikur \$139,182, which represented the business-loss damages plus the security-deposit damages, and Shikur’s costs and fees, including attorney fees.

The Halversons appeal.

## **DECISION**

### **I. The district court’s damages award is not supported by the record.**

A lease is a type of contract and therefore is subject to the general principles of contract law. *See RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 14 (Minn. 2012). It is a plaintiff’s burden to prove damages arising from the breach of a contract. *See Canada by Landy v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997) (“In an ordinary civil action, the plaintiff has the burden of proving damages caused by the defendant by a fair preponderance of the evidence.”). When reviewing a district court’s damages award, this court “consider[s] the evidence in the light most favorable to the verdict” and will not set aside the award “unless it

is manifestly and palpably contrary to the evidence.” *Rayford v. Metro. Transit Comm’n*, 379 N.W.2d 161, 165 (Minn. App. 1985) (quotation omitted), *rev. denied* (Minn. Feb. 14, 1986). Though a district court “need not adopt the exact figures of any witness in determining damages,” its determination must be “within the mathematical limitations established by the various witnesses and . . . otherwise reasonably supported by the evidence as a whole.” *Fudally v. Ching Johnson Builders, Inc.*, 360 N.W.2d 436, 439 (Minn. App. 1985) (quotation omitted). Damages that are too remote or based on speculation or conjecture are not recoverable. *Leoni v. Bemis Co.*, 255 N.W.2d 824, 826 (Minn. 1977). For this reason, the damages are not recoverable here.

We directed the district court to determine on remand the value of Shikur’s business before and after the breach. *Shikur*, 2022 WL 829362, at \*6. On remand, the district court found that the prebreach value of the business was \$136,882 and that the postbreach value of the business was zero dollars. Neither of these findings is supported by evidence in the record.

The district court’s finding as to the value of the business at the time the breach began relies on evidence that is too remote in time. We considered a similar error in a district court’s business valuation in *Teachout v. Wilson*, in which a district court determined a business’s value at the time of the breach by relying on its sale price two and one-half years after the breach. 376 N.W.2d 460, 464 (Minn. App. 1985). The district court reasoned that, because the business was “substantially the same” at the time of the breach and at the time of the sale, the sale price was an appropriate valuation of the business at the time the breach occurred. *Id.* This court rejected that reasoning, however, and

concluded that there was “no evidence of the fair market value of the business at or near the time of the breach.” *Id.* The district court made the same error here when it based its valuation finding on the sale price of the business more than 18 months prior to the time the breach began. It employed the same erroneous reasoning as the district court in *Teachout*, concluding that, because there was “no evidence in the record of any loss in the business’ value” between the two periods, the value must be the same. We again conclude that the valuation upon which the district court relied was too remote in time to support the damages award.

The district court’s business valuation at the end of the breach is also unsupported by the record. The district court reasoned that because Shikur’s business was rendered inoperable as a result of the breach, the business’s final value must have been zero dollars. But this finding is speculative. The promissory note included in the record for the 2015 sale of the business shows that Shikur entered into an “Asset Purchase Agreement” with the previous owner for \$136,882. There is nothing in the record to suggest that the assets of the business were the same at the time Shikur was forced to vacate as they were when he purchased the convenience store nearly four years earlier. In fact, the record reflects that Shikur operated the business up until he vacated the property and had sold much of the store’s inventory before then. We see nothing in the record that establishes the value of the business’s assets at the end of the breach in 2019.

In the absence of any record support for the district court’s finding, we must conclude that the award for loss-of-business damages is too speculative to be sustained. Because Shikur failed to prove loss-of-business damages, he is not entitled to them, even

though the district court found that Erik breached the lease. *See Vault, Inc. v. Michael-Nw. P'ship*, 372 N.W.2d 7, 9 (Minn. App. 1985) (affirming district court's refusal to award speculative lost-profits damages for breach of commercial lease), *rev. denied* (Minn. Sept. 13, 1985); *cf. Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 & n.5 (acknowledging that, for purposes of stating a breach-of-contract claim, plaintiffs *may* not have to allege damages).

## **II. Shikur is entitled to attorney fees.**

Erik challenges the district court's award of \$47,575.50 in costs and attorney fees under the lease agreement. The attorney-fee provision of the lease agreement provides:

In case suit should be brought for recovery of the premises or for any sum due hereunder, or because of any act which may arise out of the possession of the premises by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

We review an attorney-fee award for an abuse of discretion. *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987).

Erik argues only that Shikur is not the prevailing party because he failed to prove loss-of-business damages. The argument ignores the fact that Shikur proved that Erik breached the lease and that Shikur was entitled to damages for his withheld security deposit. Erik does not contend that the amount of attorney fees awarded was unreasonable, and his failure to do so forfeits any argument on that issue. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (“[O]n appeal error is never presumed. It must be made

to appear affirmatively before there can be reversal. . . . [And] the burden of showing error rests upon the one who relies upon it.”). We therefore affirm the attorney-fee award.

**Affirmed in part and reversed in part.**