

*This opinion is nonprecedential except as provided by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
A24-0215**

Absolute Sports Cards, LLC,
Respondent,

vs.

Matthew Thornton,
Appellant.

**Filed September 23, 2024
Affirmed
Bjorkman, Judge**

Scott County District Court
File No. 70-CV-19-7637

Adam Y. Galili, Metro Law & Mediation, Minneapolis, Minnesota (for respondent)

Rodd Tschida, Minneapolis, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges the judgment entered following a court trial regarding his dispute with respondent, a limited liability company that appellant and two other members formed. Appellant argues that the district court (1) erred by concluding that a section of respondent’s operating agreement is void as “manifestly unreasonable” under Minn. Stat.

§ 322C.0110, subd. 4 (2022); (2) erred in expelling him as a member of respondent under Minn. Stat. § 322C.0602 (2022), effective before the date of its order; (3) abused its discretion by awarding respondent lost profits for appellant's competition with respondent in breach of the operating agreement; and (4) abused its discretion in determining the value of appellant's share in respondent at the time of his expulsion. We affirm.

FACTS

In October 2016, appellant Matthew Lawson Thornton and two other men who traded sports cards and other sports collectibles, Michael Hanson and Clint Wolcyn, formed respondent Absolute Sports Cards LLC (ASC) for the purpose of doing so together.¹ They executed an operating agreement that establishes certain rights and obligations of the members of ASC and provides that those not established in the operating agreement are “as provided in” the Minnesota Revised Uniform Limited Liability Company Act, Minn. Stat. §§ 322C.0101-.1205 (2022) (the Act). Among those obligations specified in the operating agreement, Section 11 prohibits the members from competing with ASC during their tenure as members and for two years after their membership ends, detailing numerous categories of prohibited competitive conduct. But Section 11.5 of the operating agreement provides: “Unless subsequently unanimously agreed to in writing by Members, the provisions of Section 11 shall not apply to or be binding upon any Member's same or similar business in existence at the time of the execution of this Agreement.”

¹ ASC initially had a different name, but the members unanimously changed it.

Following execution of the operating agreement, Hanson and Wolcyn wrapped up their individual sports-collectibles businesses, transferring both their inventory and the proceeds from final sales to ASC. But Thornton did not transfer any of his inventory to ASC and continued operating his individual business, real651. Between ASC's founding and August 2018, Thornton received \$67,198.48 from real651 sales and did not transfer any of it to ASC.² Hanson and Wolcyn spoke with Thornton several times about their concerns that he was continuing to operate his competing business and not putting full time and effort into ASC; Thornton did not change his conduct.

At a company meeting on August 25, 2018, Hanson and Wolcyn voted to remove Thornton from ASC, principally because of his continued operation of a competing business, and offered to buy him out. Thornton objected on the ground that Section 11.5 of the operating agreement permits him to continue real651 as the business existed when they executed the agreement. After that meeting, Thornton no longer participated in ASC's activities but continued to operate real651.

The following spring, ASC initiated this action against Thornton, alleging that he competed with the company in violation of the operating agreement and seeking (1) Thornton's expulsion from ASC under Minn. Stat. § 322C.0602, subd. 5; (2) damages incurred as a result of his competition with ASC; and (3) an order prohibiting him from competing with ASC for two years. Thornton asserted counterclaims, alleging, in relevant part, that the other members of ASC forced him out in violation of the operating agreement,

² This amount is in addition to \$7,817.96 that Thornton paid to ASC for sales the company made through real651.

denied him his rightful compensation, and improperly withdrew cash from the company for their own benefit. He requested relief in the form of ASC's dissolution and damages.

ASC moved for partial summary judgment, seeking a determination that Section 11.5's noncompetition waiver is void as "manifestly unreasonable" under Minn. Stat. § 322C.0110, subd. 4(1)(iii), and that Thornton's undisputed ongoing competition breached his duty of loyalty to the company, which warrants his expulsion from the company. ASC also sought dismissal of Thornton's dissolution counterclaim. In February 2022, the district court partially granted the motion, determining that Section 11.5 is void but concluding that material issues of fact remained as to whether Thornton breached his duty of loyalty to the company or whether dissolution of the company is warranted.

Following a three-day trial in April 2023, the district court determined that Thornton engaged in "persistent and uninterrupted" competition with ASC from the time of the company's establishment through trial, warranting his expulsion from ASC effective August 25, 2018. And it ordered ASC to pay Thornton the value of his share in the company as of that date, which it found to be \$25,000. The district court also determined that Thornton breached the operating agreement by competing with ASC, specifically by selling collectibles through real651 that he otherwise "would have sold . . . through [ASC] as his partners did with their inventories," and awarded ASC damages of \$67,198.48—the amount that Thornton netted from his real651 sales through August 25, 2018. The district court rejected Thornton's breach-of-contract claim, finding that even if ASC breached the operating agreement by "expelling him as a member," he "defaulted first by competing against it," and his breach "has continued uninterrupted" since execution of the operating

agreement. The district court also determined that the company's dissolution was not warranted.

Thornton moved for amended findings or a new trial. ASC opposed the motions and moved for attorney fees under the operating agreement, which provides for attorney fees to the prevailing party in an action to enforce or interpret the agreement. The district court denied Thornton's posttrial motions and awarded ASC attorney fees.

Thornton appeals.

DECISION

A district court's factual findings "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. We will not disturb the court's findings unless they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985). But we apply a de novo standard of review to questions of law, including interpretation of a statute or an unambiguous contract, *Horodenski v. Lyndale Green Townhome Ass'n, Inc.*, 804 N.W.2d 366, 371 (Minn. App. 2011), and application of a statute to established facts, *State Farm Mut. Auto. Ins. Co. v. Metro. Council*, 854 N.W.2d 249, 255 (Minn. App. 2014), *rev. denied* (Minn. Dec. 16, 2014).

I. Section 11.5 of the operating agreement is void as "manifestly unreasonable" under Minn. Stat. § 322C.0110, subd. 4.

Under the Act, each member of a member-managed limited liability company—like ASC—owes fiduciary duties of loyalty and care to the company and the other members.

Minn. Stat. § 322C.0409, subd. 1. The duty of loyalty includes a duty “to refrain from competing with the company in the conduct of the company’s activities.” *Id.*, subd. 2(3). An operating agreement generally may not “eliminate” the duty of loyalty or any other fiduciary duty. Minn. Stat. § 322C.0110, subd. 3(4). But “[i]f not manifestly unreasonable,” an operating agreement may “restrict or eliminate” the duty “to refrain from competing with the company in the conduct of the company’s business.” *Id.*, subd. 4(1)(iii). In determining whether any term of an operating agreement is manifestly unreasonable, a court

- (1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and
- (2) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:
 - (i) the objective of the term is unreasonable; or
 - (ii) the term is an unreasonable means to achieve the provision’s objective.

Id., subd. 8.

Thornton argues that the waiver of the duty not to compete in Section 11.5 cannot be manifestly unreasonable because Minn. Stat. § 322C.0110, subd. 4(1)(iii), expressly permits such waivers. And he points to *Lamme v. Client Instant Access, LLC*, which addressed New Jersey’s parallel uniform-law provision, as authority for the proposition that “such waivers . . . are commonplace and widely accepted.” No. A-2689-20, 2022 WL 1276123, at *2 (N.J. Super. Ct. App. Div. Apr. 29, 2022). We agree that Minn. Stat. § 322C.0110, subd. 4(1)(iii), expressly permits members to, as part of the operating agreement, “restrict” or even “eliminate” the duty not to compete with the company. But

members may do so only if this term is “not manifestly unreasonable.” *Id.* In other words, inclusion of a term in an operating agreement that waives the duty not to compete is not inherently unreasonable; there must be something else in the circumstances existing at the time the operating agreement was executed that makes the waiver manifestly unreasonable. After careful review, we are convinced that Section 11 of the operating agreement is that something else.

Section 11 exhaustively prohibits the members from engaging in any form of competition with ASC, not only during their membership but for two years thereafter. It provides that the members will not: “compete” with ASC in “the same sales business,” which it defines to include not only the sale of sports cards and other sports collectibles but also “non-sports-related valuables”; “carry on” or “engage in” any business “similar” to ASC; “take any action” that is “designed to” or actually “compete[s]” for ASC customers, suppliers, or other ASC business contacts; or “own” or otherwise “engage in” any business “similar” to ASC. And it applies in Minnesota, North Dakota, South Dakota, Iowa, Wisconsin, and “any other states [ASC] solicits business or prospects in the future.”

In light of the comprehensive scope of this prohibition, Section 11.5 can only mean one of two things, neither of which is reasonable. First, Section 11.5 could mean that the members, while generally committing not to compete with ASC, have some temporary latitude to continue operating their existing individual businesses as they wind them down and transfer inventories to ASC. If so, Section 11.5 is an unreasonable means to achieving that objective because it contains no temporal or other scope restriction. Second, Section 11.5 could mean that the members may continue operating their individual businesses in

direct competition with ASC, indefinitely. If so, Section 11.5 is unreasonable in its objective and wholly undermines and creates an irreconcilable conflict with Section 11.³ Because neither interpretation of Section 11.5 is reasonable, the purported agreement to eliminate the members' duty not to compete with ASC is manifestly unreasonable and, therefore, void.

II. The district court did not err by expelling Thornton as a member of ASC, effective August 25, 2018.

The Act provides 14 events that dissociate a member from a limited liability company, including

when . . . on application by the company, the person is expelled as a member by judicial order because the person . . . has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under section 322C.0409.

Minn. Stat. § 322C.0602(5).

The district court granted ASC's request to expel Thornton based on its determination that he engaged in direct and uninterrupted competition with ASC from the date of its inception through the date of trial in a manner that was both persistent and willful, constituting material breaches of both Section 11 of the operating agreement and his duty of loyalty to the company under Minn. Stat. § 322C.0409. Thornton argues that the district court erred by (1) determining that he engaged in conduct warranting his

³ We note that nothing in the *Lamme* decision, on which Thornton relies, suggests that the operating agreement at issue there contained a similarly broad noncompetition provision so as to create the internal conflict present here. *Lamme*, 2022 WL 1276123, *1-2.

judicial expulsion from ASC, and (2) making his expulsion effective August 25, 2018, the date on which the other members voted to remove him.⁴

Grounds for Judicial Expulsion

Thornton argues that he could not have “willfully” breached either Section 11 of the operating agreement or his duty of loyalty because he acted in reliance on Section 11.5. This argument is unavailing for two reasons. First, as the district court noted, Thornton continued to operate real651 not only in spite of his fellow members’ objections but also after the court decided that Section 11.5 is void through the time of trial, a span of 14 additional months. Such conduct amply demonstrates “willful” competition in contravention of Section 11 and his duty of loyalty.

Second, a court may order expulsion of a member who “willfully *or* persistently” breaches their duties. Minn. Stat. § 322C.0602(5) (emphasis added). The term “or” generally indicates a disjunctive. *Broadway Child Care Ctr., Inc. v. Minn. Dep’t of Hum. Servs.*, 955 N.W.2d 626, 634 (Minn. App. 2021). As such, the unchallenged and amply supported finding that Thornton “persistently” breached Section 11 and his duty of loyalty independently justifies the decision to expel him under Minn. Stat. § 322C.0602(5). Because the record supports the district court’s determination that Thornton breached

⁴ Thornton also contends that the other members could not and did not actually expel him when they voted to remove him from ASC. But this assertion does not challenge any decision of the district court because the court only determined that the other members “believed” they could expel him and “essentially” did so. Most fundamentally, the court did not rely on the other members’ vote as the basis for its order expelling Thornton from ASC.

Section 11 and his duty of loyalty to the company, both willfully and persistently, we discern no error in its decision to order his expulsion.

Effective Date of Expulsion

Thornton also assigns error in the district court's decision to make the expulsion effective as of the date the other members voted to remove him from the company. He notes that the Act provides that a person is dissociated "when . . . the person is expelled as a member by judicial order." Minn. Stat. § 322C.0602(5). And he argues that the term "when" indicates a temporal limitation, meaning that a judicial expulsion is effective at the time the court enters the order for expulsion. We are not persuaded for two reasons.

First, the term "when" is not categorically temporal. It often refers to a point in time. *See The American Heritage Dictionary of the English Language* 1971 (5th ed. 2018) (providing several definitions of "when" related to time). But the term "when" also commonly indicates the existence of a particular circumstance, much like the term "if." *See Webster's Third New International Dictionary* 2602 (1993) (defining "when," in part, as "in the event that" or "on condition that"). Because Minn. Stat. § 322C.0602 defines the circumstances under which a member is dissociated, the term "when" naturally operates as a conditional limitation rather than a temporal one.

Second, even if we read "when" as a temporal limitation, the language of the statute does not support the limited view that Thornton urges. The statute identifies 14 different circumstances that trigger a member's dissociation from a company. Minn. Stat. § 322C.0602. Most of them involve a single event, such as "an event stated in the operating agreement as causing the person's dissociation," an individual member's death, or the

company's termination. *E.g., id.* (2), (6)(i), (14). By contrast, dissociation because of a judicial order expelling the member involves two events: (1) the commission of the underlying conduct that leads the company to apply for the member's expulsion, which conduct may be past ("committed") or ongoing ("committing"); and (2) the district court's entry of an order granting that application. *See id.* (5). Tying the timing of the dissociation to the conduct at issue—rather than the court's order—makes this provision effectively most like the other provisions in Minn. Stat. § 322C.0602. And it prevents the member whose conduct warrants expulsion from benefiting from any delay between the conduct and the entry of the order.

In sum, because Minn. Stat. § 322C.0602 lists the circumstances that precipitate a member's dissociation, and the relevant circumstance for dissociation based on judicial expulsion is the misconduct of the member being expelled, the district court did not err by setting the effective date of Thornton's expulsion based on his misconduct.⁵

III. The district court did not abuse its discretion by awarding ASC lost profits.

Generally, damages for breach of a covenant not to compete "are measured by the business loss suffered as a consequence of the breach," meaning the profits lost "as a direct result of" the competition. *Faust v. Parrott*, 270 N.W.2d 117, 120 (Minn. 1978). "The district court has broad discretion in determining damages, and we do not reverse absent an abuse of discretion." *Fontaine v. Steen*, 759 N.W.2d 672, 679 (Minn. App. 2009).

⁵ Thornton does not contend that, if the district court is authorized to make its expulsion effective before the date of its order, it should have used a date other than August 25, 2018.

Thornton argues that the district court abused its discretion by awarding ASC \$67,198.48 as lost profits attributable to his breach of the operating agreement. He contends the award is improper because (1) ASC did not plead a claim for lost profits, and (2) the record contains insufficient evidence of causation.⁶ Neither contention convinces us to reverse.

Pleading

Minnesota is a “notice-pleading state,” requiring only that a pleading contain “information sufficient to fairly notify the opposing party of the claim against it.” *Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 500 (Minn. 2021) (quotation omitted); see Minn. R. Civ. P. 8.01. In its complaint, ASC alleged that Thornton breached Section 11 of the operating agreement by selling sports collectibles through real651 in direct competition with ASC, and sought “judgment against [Thornton] in an amount equal to the amount [he] derived by competing with the Company,” expected to exceed \$25,000. This pleading may not have used the phrase “lost profits,” but it provided ample notice that ASC sought to recover profits it lost because of Thornton’s breach of the operating agreement.

Causation

The district court awarded \$67,198.48 in lost profits because that is the amount Thornton netted through real651 from the time of ASC’s establishment through August 25,

⁶ Thornton also asserts that the district court improperly relied on extrinsic evidence. But he addresses only evidence related to the terms of the operating agreement, not the question of damages. Nor does he identify any authority for the proposition that the rule generally precluding consideration of extrinsic evidence to explain the meaning of a contract, see *Trebelhorn v. Agrawal*, 905 N.W.2d 237, 243 (Minn. App. 2017), applies to the determination of damages flowing from a demonstrated breach.

2018. Thornton contends this award is improper because “ASC’s damages cannot be based on real651 ‘sales’ in general,” without a causal link. But the district court identified that link, finding that if Thornton had not made those sales through real651, he otherwise “would have sold . . . through [ASC] as his partners did with their inventories.” The record amply supports that finding. Section 11 of the operating agreement broadly prohibits members from engaging in the trade of sports collectibles in competition with ASC. Had Thornton complied with it, his only way to sell sports collectibles would have been through ASC and the proceeds of all those sales would have gone to the company. Both Hanson and Wolcyn did exactly that, transferring their inventories to ASC and selling them through the company, or transferring the proceeds of any final individual sales to the company. On this record, the district court did not abuse its discretion by awarding \$67,198.48 in damages for lost profits.

IV. The district court did not abuse its discretion in determining and awarding to Thornton the value of his share in ASC on the effective date of his expulsion.

Thornton challenges the district court’s finding that the fair value of his share of the company on the effective date of his expulsion was \$25,000, as well as the district court’s approach to determining this amount. Nothing in the Act expressly addresses how to value a member’s share of a company in the context of a court-ordered buy-out. But generally, a district court has “broad discretion” to determine the date and method of valuing a company. *Lund v. Lund*, 924 N.W.2d 274, 282-83 (Minn. App. 2019) (quoting *Advanced Commc’n Design, Inc. v. Follett*, 615 N.W.2d 285, 290 (Minn. 2000)), *rev. denied* (Minn. Mar. 27, 2019). This discretion extends to determining the weight and credibility of expert

opinions regarding fair value. *Rainforest Cafe, Inc. v. State of Wis. Inv. Bd.*, 677 N.W.2d 443, 451 (Minn. App. 2004). A district court abuses its discretion when it makes clearly erroneous findings of fact or misapplies the law. *In re Otto Bremer Tr.*, 2 N.W.3d 308, 319 (Minn. 2024).

Thornton contends the district court abused its discretion in setting August 25, 2018, as the valuation date because he was technically still a member of the company from then until the date the district court ordered his expulsion. But the district court's expulsion order negated that membership. And more importantly, the court selected August 25, 2018, as the valuation date because Thornton undisputedly did not contribute anything to the company's growth after that date, the other members "acted promptly" to seek his judicial expulsion, and Thornton "should not be able to capitalize upon gains and value realized during this lawsuit." Thornton identifies no flaw in this reasoning, and we discern none.

Thornton also challenges the district court's rejection of his expert's opinion that his one-third share of ACS was worth \$343,700. But that opinion valued the company as of December 31, 2021—more than three years after the court-adopted valuation date. Because setting the valuation date was well within the district court's discretion, the court was equally entitled to exercise its discretion to reject an expert opinion that has no relation to that date. Using that date as a reference, the court noted that a schedule attached to, and executed simultaneously with, the operating agreement provides that the value of each member's interest in the company is \$25,000, and that the members never updated or revised that schedule. And the court found that a \$25,000 per-member value "corresponds reasonably" with ASC's financial information around August 2018.

Moreover, the district court made more than six pages of findings evaluating the expert's valuation and detailing its numerous reasons for rejecting it. In particular, the court noted that Thornton was the sole source of the expert's information about ASC, which led the expert to mischaracterize cash withdrawals that Hanson and Wolcyn used for purchasing inventory and disregard the impact of real651's competition on ASC. The court also observed that the valuation was prepared in January 2023 but focused on December 2021, omitting ASC's losses in 2022 even though it purported to give greater weight to more recent years' performance. Because the district court made robust findings in support of its decision to reject the expert's valuation, and Thornton has identified no clear error in those findings, he has not demonstrated any abuse of discretion in that decision.

Finally, within this same section of his brief, Thornton also appears to argue that the district court abused its discretion by (1) not awarding him member distributions after August 2018 and other amounts he claimed as damages in connection with his breach-of-contract claim against ASC; and (2) awarding ASC attorney fees as the prevailing party. As to the first argument, Thornton fails to acknowledge that the district court rejected his breach-of-contract claim, let alone present any legal analysis or authority demonstrating that the district court erred in doing so. Accordingly, he has forfeited any such argument. *See Ward v. El Rancho Manana, Inc.*, 945 N.W.2d 439, 448 (Minn. App. 2020), *rev. denied* (Minn. Sept. 29, 2020). And Thornton's attorney-fees argument is similarly flawed because he does not dispute that ASC is the prevailing party, that the prevailing party is entitled to attorney fees under the operating agreement, or the amount of attorney fees awarded. Indeed, he argues only that he should prevail in this appeal and therefore ASC

is not the prevailing party. But as discussed above, his arguments for reversal fail, leaving ASC as the prevailing party.⁷

Affirmed.

⁷ In his statement of the issues, Thornton appears to assign error in the district court's denial of his posttrial motions. But the body of his brief includes no discussion of the issue, legal analysis, or supporting authority. As such, he has forfeited the issue. *Ward*, 945 N.W.2d at 448.