

*This opinion is nonprecedential except as provided by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
A24-0255**

In the Matter of the Civil Commitment of: Tokvan Ly.

**Filed September 23, 2024
Affirmed in part, reversed in part, and remanded
Schmidt, Judge**

Scott County District Court
File No. 70-PR-22-12592

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Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and
Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this dispute regarding the attorney fees arising out of civil-commitment-related disputes, appellant Scott County (the county) argues that the district court erred by (1) deciding that the county was statutorily required to pay Tokvan Ly's attorney fees; and (2) determining that a contract between the county and respondent Jaspers, Moriarty & Wetherille, P.A. (JMW) provided a separate basis for requiring the county to pay the fees. Because the statute does not require the county to pay attorney fees, we reverse and remand for the district court to determine the proper amount of fees that should be awarded based

upon the work for the civil-commitment proceedings. We also reverse and remand for the district court to analyze whether the terms of the contract allow for fees and, potentially to hold an evidentiary hearing related to the parties' past course-of-conduct.

FACTS

This appeal arises from a dispute of whether a Minnesota statute or a private contract required the county to pay attorney fees to JMW regarding work the law firm performed on behalf of a client in a mandamus action.

The county and JMW enter into a contract for legal services.

In January 2019, the county contracted with JMW to provide legal services in matters that required court-appointed counsel. The language of the contract specifies that the county sought to enter into an agreement

for the needed provision of legal representation to individuals in cases requiring attorneys appointed by a Judge of the Court, including probate, paternity, child support, children in need of protection or services (CHIPS), guardianships, conservatorships, chemical dependency commitments, and commitments involving mentally ill and dangerous persons, sexually dangerous persons and/or psychopathic persons.

The "Scope of Services" provision of the contract included fourteen bullet points listing descriptions of work that JMW agreed to furnish, including conferences with clients, case investigation, legal writing and document drafting required for the representation, and representation at hearings. The scope of services provision did not include filing auxiliary writs or any work outside the specific case that required the attorneys' appointment.

The contract also included a "Condition of Payment" provision that allowed the county to withhold payment for work "found by the County to be unsatisfactory, or

performed in violation of federal, state and local laws, ordinances, rules or regulations.” The contract also provided that “[o]ne or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.” The contract was effective until December 31, 2022, but the agreement was terminated on December 3, 2022.

JMW represents Ly in a civil-commitment matter.

The State of Minnesota charged Ly with several criminal offenses in July 2022. A district court later found Ly incompetent to stand trial and ordered Ly to be evaluated for potential civil commitment. The county then petitioned for commitment and Scott County Court Administration appointed JMW to represent Ly in his commitment matter.

At the commitment hearing, JMW raised the issue of the risk of non-compliance with Minnesota Statutes section 253B.10, subdivision 1 (2022), which required a patient “be admitted to a state-operated treatment program within 48 hours.” The district court declined to hear the issue during the commitment hearing and, instead, told JMW to file a mandamus action to address the issue. The court then committed Ly to the Commissioner of Human Services (the commissioner).

After the hearing, Ly remained in jail. JMW filed a petition for writs of mandamus and habeas corpus on behalf of Ly, naming the commissioner as the respondent and asserting noncompliance with the statutory 48-hour rule. After Ly spent approximately two months in jail, the district court granted the petition for a preemptory writ of mandamus and required the commissioner to immediately admit Ly to a treatment facility or state-operated program. The district court also found that the writ of mandamus was Ly’s

only legal remedy to address the statutory violation because he could not raise any of the right-to-treatment issues in his commitment action. Various appellate proceedings, including related to the mandamus proceeding, followed in A22-1757, A22-1826, and A22-1828.

JMW seeks attorney fees from the county.

JMW invoiced the county for work performed in the civil-commitment proceedings as well as in the mandamus action. Court administration advised JMW that the county would not pay for JMW's representation of Ly related to the mandamus action.

JMW moved for an order compelling the county to pay for the attorney fees related to the mandamus action pursuant to the parties' contract and under the Minnesota Commitment and Treatment Act (Minn. Stat. Ch. §§ 253B.01-.24 (2022)). The district court granted the motion and ordered the county to pay fees under both the contract and the statute.

The district court found the contractual language to be ambiguous. The court then cited its own "experience presiding over myriad cases in Scott County for at least ten years" and found that the county had previously "paid for these extended representation situations where the legal representation extended naturally from the original court appointment and was necessary for full representation of the clients." The district court also found that the county's past payments of invoices provided by JMW, including for work not expressly covered by the contract, waived any argument that the mandamus action was not covered under the contract. The court held that the county was obligated to pay fees for the mandamus work under the contract based upon the parties' course of dealing.

The district court also found that the statute required the county to pay for JMW's mandamus action work. The district court found that JMW was required to provide "vigorous advocacy" for Ly, including protecting his rights under the 48-hour rule. The court also noted that Ly had no other avenue to protect his statutory right to be admitted to a treatment facility within 48 hours and, as such, the mandamus action "flowed intrinsically" from the civil-commitment proceeding. Because the court concluded that the mandamus action constituted a proceeding under the act—thus triggering Ly's statutory right to counsel—the district court ruled that the county was required to pay JMW for representing Ly in the mandamus action in accordance with the language of the act.

After a new judge was assigned to the case, the new district court judge granted the county permission to move for reconsideration. But the court limited the reconsideration to the portion of the original order that required the county to pay the fees within 30 days.

The district court then ordered a limited modification to the original order and required JMW to submit the required application for attorney fees under Minnesota General Rule of Practice 119. After JMW submitted its application, the district court filed an order that determined that the county must pay JMW \$18,944.09 in fees and expenses.

The county appeals.

DECISION

I. The district court erred in determining the treatment act authorizes attorney fees for legal actions seeking writs of mandamus and habeas corpus.

The county argues that the district court erred in determining that the treatment act required the county to pay fees for work that JMW performed on behalf of Ly in the mandamus action. We review issues of statutory interpretation de novo. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016).

The relevant provision from the treatment act provides:

A patient has the right to be represented by counsel at any proceeding under this chapter. The court shall appoint a qualified attorney to represent the proposed patient if neither the proposed patient nor others provide counsel. The attorney shall be appointed at the time a petition for commitment is filed or when simultaneous competency and civil commitment examinations are ordered under subdivision 2a, whichever is sooner. In all proceedings under this chapter, the attorney shall:

- (1) consult with the person prior to any hearing;
- (2) be given adequate time and access to records to prepare for all hearings;
- (3) continue to represent the person throughout any proceedings under this chapter unless released as counsel by the court; and
- (4) be a vigorous advocate on behalf of the person.

Minn. Stat. § 253B.07, subd. 2c.

For each proceeding under the treatment act, the statute provides that “the court shall allow and order paid . . . to the patient’s counsel, when appointed by the court, a

reasonable sum for travel and for the time spent in court or in preparing for the hearing.” Minn. Stat. § 253B.23, subd. 1(a).

JMW argues that they were required to bring a separate petition for a writ of mandamus and a writ of habeas corpus to vindicate Ly’s rights under the 48-hour rule as guaranteed by the treatment act. Assuming that JMW’s contention is accurate, the argument does not directly address the issue before this court. The issue before us is not the necessity of those actions, but whether the plain language of the statute obligates the county to pay the attorney fees related to those separate actions.

The county is only obligated to pay fees under the statute if the writ actions JMW filed were “proceedings” under the act. Minn. Stat. § 253B.07, subd. 2c. The parties dispute what constitutes a “proceeding” under the statute.

We recently answered that question in a case involving the same county, the same law firm, and a nearly identical mandamus action that the law firm filed on behalf of a different client to vindicate that client’s rights under the statutory 48-hour rule. *See In re Civ. Commitment of Swope*, ___ N.W.3d ___, ___, No. A24-0128, slip op. at 12 (Minn. App. Sept. 16, 2024). *Swope*, therefore, controls our analysis in this case and requires reversal of the district court’s order awarding fees under the treatment act.

In *Swope*, the county—as it does here—argued that the mandamus action was not a “proceeding” under the statute and, as such, the district court erred in awarding JMW attorney fees under the treatment act. *Id.* at 4. JMW argued—as it does here—that they were forced to bring a separate petition for a writ of mandamus or petition for a writ of

habeas corpus in order to vindicate Swope’s alleged right to be admitted to a treatment facility within 48 hours as guaranteed by the statute. *Id.* at 9.

We held that “a proceeding resolving a dispute over a patient’s right to treatment is not a proceeding specifically mentioned in the treatment act, and it is therefore not a proceeding ‘under’ the act.” *Id.* at 7. In reaching that conclusion, we rejected the same arguments JMW makes in this appeal related to the treatment act’s language regarding a habeas corpus proceeding, concluding that the reference merely identifies a “preexisting right independent of the chapter, not . . . a proceeding of any kind, let alone a proceeding under this chapter.” *Id.* at 8. We reversed the district court’s decision that the statute obligated the county to pay JMW’s fees incurred while representing Swope on the separate mandamus and habeas corpus proceeding. *Id.* at 12.

The *Swope* decision controls our statutory analysis in this case. The statute does not obligate the county to pay the attorney fees for the separate mandamus and habeas corpus proceeding that JMW filed on behalf of Ly.¹ *Id.*

¹ For the first time during oral argument, JMW contended that the statutory language regarding the 48-hour rule does not relate to “treatment” because the Legislature did not specify that *treatment* must begin within 48 hours. See Minn. Stat. § 253B.10, subd. 1 (“Patients described in this paragraph must be admitted to a state-operated treatment program within 48 hours.”). JMW argued that the 48-hour rule relates to “moving” or “transporting” the person to an appropriate state-operated facility. *Id.* Although the argument raises an interesting question, the issue was neither litigated before the district court, nor has been adequately briefed on appeal for our consideration. *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 728 (Minn. 2005) (declining to review issue that “was neither timely presented before the district court nor adequately briefed on appeal”). As such, we conclude that JMW has forfeited the issue. *Id.*

As we acknowledged in *Swope*, JMW’s policy arguments are “well founded and raise genuine practical concerns.” *Id.* at 9. Assuming the actions taken by JMW on behalf of Ly in the mandamus action were appropriate, if not essential, to protect Ly’s rights, the issue before us is limited to whether the statute requires the county to pay fees for the work performed in the mandamus action. Based on the plain language of the statute, petitions for writs of habeas corpus or mandamus are not “proceedings” under the treatment act. As such, Ly’s right to counsel under the act—and in turn, JMW’s entitlement to fees under the statute—does not extend to a petition for a writ of mandamus or habeas corpus.

The county is, however, responsible for paying the fees for the work JMW performed for Ly in the commitment proceedings. Accordingly, we affirm the portion of the district court’s order for work JMW performed within the scope of the commitment proceedings, reverse the portion of the district court’s order that required the county to pay JMW fees under the statute for the work performed after the commitment proceedings, and remand for the district court to determine the appropriate amount of fees that the county must pay under the statute for the work JMW performed in the commitment proceedings.

II. The district court erred in determining the parties’ contract entitled JMW to attorney fees incurred in the mandamus action.

The county argues that the district court erred by determining the contract required the county to pay JMW fees for work performed in the mandamus action. “Absent ambiguity, the interpretation of a contract is a question of law.” *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011). “The primary goal of contract interpretation is to determine and enforce the intent of the parties.” *Travertine Corp. v. Lexington-*

Silverwood, 683 N.W.2d 267, 271 (Minn. 2004). When the language of the contract is unambiguous, it should be given its plain meaning. *Savela v. City of Duluth*, 806 N.W.2d 793, 796-97 (Minn. 2011). Whether language in a contract is ambiguous “is a question of law that we review de novo.” *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). Contract language is ambiguous if it is reasonably susceptible to more than one meaning. *Hoyt v. Brokaw*, 359 N.W.2d 310, 311 (Minn. App. 1984).

The county first argues that the district court erred in ruling that the language of the parties’ contract was ambiguous. We agree. The district court determined that the contract was ambiguous because the terms did not “explicitly allow or disallow work by JMW for clients where JMW was initially court appointed and the extended representation grew out of the underlying court appointed representation.” However, the plain language of the contract limited the scope of the matters covered to cases “requiring attorneys appointed by a Judge of the Court, including probate, paternity, child support, children in need of protection or services (CHIPS), guardianships, conservatorships, chemical dependency commitments, and commitments involving mentally ill and dangerous persons, sexually dangerous persons and/or psychopathic persons.” Additionally, the “Scope of Services” provision did not include filing auxiliary writs or allow for any work outside a case that required the attorneys’ appointment. As such, the plain language of the contract unambiguously excludes work by JMW for clients if the representation does not “require[] attorneys appointed by a Judge of the Court.” Because petitions for a writ of habeas corpus or mandamus do not require an attorney to be appointed by a judge, the mandamus action JMW filed on behalf of Ly was outside the scope of the parties’ contract. Thus, the plain

language of the contract does not provide an independent basis for JMW to recover attorney fees for the work in the mandamus action.

The county also contends the district court erred in determining that the parties' past conduct required the county to pay JMW's fees for the mandamus work. The district court found that the county had previously paid JMW fees for some work performed on behalf of clients that went beyond the direct representation stemming from a court appointment. The court determined that the parties' course-of-dealing modified the contract in a manner that authorized the fees invoiced by JMW for work completed on the mandamus action.

The district court, however, did not address the "Severability" provision in the contract. That term provided, in part, that "[o]ne or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party."

In addition, in making the course-of-dealing ruling, the district court improperly relied on the judge's own experience with regard to the county's prior payments of fees. The district court wrote:

This Court's experience presiding over myriad cases in Scott County for at least ten years comports with [the attorney's] averments pertaining to JMW's scope of representation in court-appointed-counsel cases.

. . . .

It is clear Scott County has paid for these extended representation situations where the legal representation extended naturally from the original court appointment and was necessary for full representation of the clients.

But rule 2.9(C) of the Minnesota Code of Judicial Conduct provides that “[a] judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.” Minn. Code Jud. Conduct Rule 2.9(C). The district court’s experience presiding over prior cases involving the county and JMW is not evidence that was presented to the district court. *See State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005) (holding within a criminal context that the trier of fact must base decisions “upon the facts in evidence”). The fact that the county may have paid for certain work in the past is also not evidence that may be properly judicially noticed. *See Lickfett v. Jorgenson*, 229 N.W. 138, 139 (Minn. 1930) (“We may take judicial notice of that which may be regarded as common knowledge of every person of ordinary intelligence; of that which is or ought to be generally known. We do not take judicial notice of things which are not of common and general understanding. . . . [W]e cannot take judicial notice of such facts as are known, if at all, only by a specially informed class of persons.”); Minn. R. Evid. 201 (noting facts that may be judicially noticed). If, for example, the evidence was admissible at an evidentiary hearing or a trial, the judge would need to be called as a witness to offer testimony about his experience presiding over prior cases related to the parties’ prior dealings and payment of fees.

As such, the district court could not use its own experience presiding over prior cases involving two independent parties working under a private agreement as evidence to make a definitive ruling that the parties’ course-of-conduct modified the contract. Such a ruling constitutes a finding that resolves disputed questions of fact, which must be resolved by a factfinder (*i.e.*, a jury or a judge presiding over an evidentiary hearing or a trial).

The record, as presented on appeal, does not allow us to dissociate the district court's own experience from the other evidence submitted that may have established a course-of-dealing that modified the contract. As such, we remand for the district court to (1) determine the effect, if any, of the non-waiver term within the "Severability" provision in the parties' contract, and (2) if the non-waiver term within the "Severability" provision does not preclude a course-of-dealing modification to the contract, to hold an evidentiary hearing or trial regarding the course-of-dealing between the parties.

Affirmed in part, reversed in part, and remanded.