This opinion is nonprecedential except as provided by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
A24-0427

Mark Weber, et al.,
Respondents,

vs.

Jeffrey P. Brockberg, et al.,
Appellants.

Filed January 27, 2025
Affirmed in part and reversed in part
Slieter, Judge

Cass County District Court
File No. 11-CV-22-2041

Bradley A. Kletscher, Tyler W. Eubank, Barna, Guzy & Steffen, Ltd., Minneapolis, Minnesota (for respondents)

Joseph A. Gangi, Daniel J. Bellig, Farrish Johnson Law Office, Chtd., Mankato, Minnesota (for appellants)

Considered and decided by Slieter, Presiding Judge; Bentley, Judge; and Reilly, Judge.*

NONPRECEDENTIAL OPINION

SLIETER, Judge

This appeal is taken from judgment in favor of respondent LLC on its breach-of-fiduciary-duty claim against appellants/cross-respondents, two of its members

---

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

who held a majority interest in the LLC. Appellants assert that genuine issues of material fact regarding damages preclude summary judgment, and the district court erred by awarding attorney fees in favor of the LLC under Minn. Stat. § 322C.0906 (2024). By notice of related appeal, respondents argue that the district court erred by dismissing their claim for breach of fiduciary duty and three claims brought under the Minnesota Revised Uniform Limited Liability Company Act, Minn. Stat. §§ 322C.0101-.1205 (2024).[1]

Because there are no genuine issues of material fact regarding the amount of damages to the LLC caused by appellants' breaches of fiduciary duty, we affirm the district court's grant of summary judgment in favor of the LLC. But because the district court erred by awarding attorney fees to the LLC under Minn. Stat. § 322C.0906, we reverse that award. And, because individual-respondents' claims belong to the LLC, we affirm the district court's dismissal of those claims.

FACTS

Respondent/cross-appellant South Walker Bay LLC was formed in 2012. The company owns a single parcel of property and operates a resort with rental cabins on the property.

Appellants/cross-respondents Jeffrey P. Brockberg and Debra J. Brockberg own 50% of South Walker Bay. Jeffrey Brockberg owns an additional 5% of South Walker

[1] The LLC also challenged the dismissal of its claim for conversion. At oral argument, the LLC conceded that, if we affirm the district court's grant of summary judgment, we need not address whether the district court erred by dismissing its conversion claim. Because, as we explain below, we affirm the district court's grant of summary judgment regarding damages to the LLC, we do not reach this issue.

Bay with his son, Michael Brockberg.[2] The remaining 45% is owned by respondents/cross-appellants Mark Weber, Carol Lee Weber, Ronnie Smith, Keith Weber, Pamela Weber, Roger Sasse, Janice Sasse, Dawn Heidebrink, Scott Heidebrink, and Dawn Smith.

On December 3, 2012, a meeting of the members of the newly formed South Walker Bay was held. Jeffrey, Debra, and Michael, representing 55% ownership, were the only members present. It is unclear whether the other members were notified about the meeting. Jeffrey was elected president and managing member. Debra was elected secretary.

In 2015, appellants obtained a $400,000 line-of-credit loan in the name of South Walker Bay. Jeffrey signed the line-of-credit-loan documents as South Walker Bay's managing member. South Walker Bay's property was provided as security for the line-of-credit loan. It is undisputed that appellants used the line-of-credit-loan proceeds for their personal benefit.

In June 2021, appellants obtained a $330,000 loan in the name of South Walker Bay. Jeffrey signed the loan as South Walker Bay's managing member. South Walker Bay's property secured the loan. Jeffrey and Debra each personally guaranteed the loan. As with the 2015 line-of-credit loan, it is undisputed that appellants used the loan proceeds for their own personal benefit.[3]

---

[2] Michael Brockberg is not a party in this dispute. And, because appellants share the same last name, we refer to them by first names when discussing them individually and as appellants when referring to them collectively.
[3] In November 2022, the lender sought foreclosure of the June 2021 loan. At the time of foreclosure, South Walker Bay owed more on the loan than the amount borrowed.

In September 2021, appellants obtained, in the names of South Walker Bay and a hog-production company owned by appellants, an $800,000 loan from the same lender that granted the $330,000 loan. Jeffrey signed the loan as the managing member of both South Walker Bay and the hog-production company. The loan was financed at a 30% annual interest rate, equating to an interest-only payment of approximately $18,000 per month. Although appellants argue that South Walker Bay's bank account "was merely . . . a conduit" for them to receive the funds, it is undisputed that appellants used the loan proceeds for their own personal benefit and that South Walker Bay made the monthly payments on the loan.

Appellants also applied funds from South Walker Bay's bank account, other than proceeds from the loans, for their personal use; they used these funds to pay insurance premiums on their own cabin, to pay harbor-slip rental costs, and to pay themselves cash on various occasions. Appellants periodically repaid South Walker Bay for some of the funds taken from its bank account.

South Walker Bay and the minority members of the LLC sued appellants alleging breach of fiduciary duty, three violations of the Minnesota Revised Uniform Limited Liability Company Act, Minn. Stat. §§ 322C.0101-.1205, and conversion.

South Walker Bay retained an expert, Darren Kray, to review the company's financial books in order to determine how much money appellants had used for their personal benefit. Kray determined that, after repayments and applicable credits in favor of appellants, appellants had removed $2,253,341.53 from South Walker Bay's bank account. Kray provided a spreadsheet detailing the deductions and repayments, demonstrating what appellants had taken from, and repaid to, South Walker Bay. Including interest, Kray opined that South Walker Bay sustained damages in the amount of $2,632,901.39.

South Walker Bay and the minority members moved for summary judgment. Jeffrey did not contest his liability for breach of fiduciary duty, but appellants contested Debra's liability and argued that genuine issues of material fact related to damages preclude summary judgment. The district court determined that both Jeffrey and Debra breached their fiduciary duties, a determination that appellants do not challenge on appeal, and it granted South Walker Bay summary judgment against appellants but denied South Walker Bay's motion for summary judgment on the conversion claim. The district court ordered appellants to sell their interest in South Walker Bay to respondents for zero dollars per share and also granted South Walker Bay's request for attorney fees. The district court also determined that the minority members' claims were direct actions brought by the LLC and, therefore, dismissed their claims.

This appeal and cross-appeal follow.

DECISION

"We review the grant of summary judgment de novo to determine 'whether there are genuine issues of material fact and whether the district court erred in its application of the law.'" *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quoting *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005)).

I. The district court properly granted the LLC summary judgment.

Appellants challenge the district court's grant of summary judgment, arguing that whether South Walker Bay sustained damages, and the amount of damages, is speculative. Appellants also challenge the valuation of their shares, claiming it was error for the district court to order they sell their interest in the LLC for zero dollars per share. We address each in turn.

Damages

"To prevail on a breach-of-fiduciary-duty claim, a plaintiff must prove four elements: duty, breach, causation, and damages." *Lund ex rel. Revocable Tr. of Lund v. Lund*, 924 N.W.2d 274, 284 (Minn. App. 2019), *rev. denied* (Minn. Mar. 27, 2019). Appellants concede the first three elements. They claim that genuine issues of material fact related to damages preclude summary judgment.

The district court determined that the undisputed facts indicate that appellants "took out over $1.5 million in loans secured by South Walker Bay's real estate and then used that money, as well as other income . . . of South Walker Bay, for their own purposes and benefit, significantly damaging South Walker Bay and threatening its very existence." The district court, relying on Kray's accounting, determined that South Walker Bay sustained damages in the amount of $2,253,341.53, plus interest, for a total judgment of $2,632,901.39.

Appellants challenge the district court's damage calculation, claiming that, because South Walker Bay has not had to relinquish the property securing the loans, it has not sustained actual damage. But it is Kray's accounting that forms the basis for the district court's damage award. And appellants do not identify any errors in Kray's accounting, nor did they present an expert accounting of their own, which might have presented a genuine issue of material fact. Kray's accounting includes funds appellants took from South Walker Bay's bank account as well as crediting to appellants funds they deposited back into South Walker Bay's bank account. Kray's accounting shows South Walker Bay suffered a monetary loss of $2,253,341.53.

Still, appellants claim that the damages amount is speculative. But appellants have not identified any disputed facts related to the damage calculation. *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. . . . [T]he burden of showing error rests upon the one who relies upon it.").

Appellants claim that "South Walker Bay has not suffered damages because it has not sold any property for a loss." But the damages award was based upon appellants' use of over two million dollars of South Walker Bay's funds. That is, the damages award was based on the amount of money appellants withdrew from South Walker Bay's account, including the loans taken out in the LLC's name as well as other LLC money appellants took for personal use.

Appellants also claim that the damages award may be duplicative. Specifically, appellants note that, despite a judgment in favor of the LLC, which includes the loan amounts, the lending institutions may seek to collect the outstanding loan balances from appellants. This challenge, however, does not create a disputed fact as to the amount of damages to the LLC but, instead, refers to the potential postjudgment ramifications they may face. And, as we have noted, the record supports the district court's determination that the undisputed facts demonstrate that South Walker Bay was damaged in the amount of $2,253,341.53.

Finally, appellants argue that there is a genuine issue of material fact regarding South Walker Bay's damages because, "Although the funds were removed from the South Walker Bay account, there is ample evidence from which a reasonable factfinder could conclude that the funds did not belong to South Walker Bay." This claim is not supported by the undisputed facts in this record. The undisputed facts show that the loans were taken out in the name of South Walker Bay and placed into its bank account and that it is obligated to repay those loans.

Kray's accounting demonstrates South Walker Bay's monetary loss, and appellants have not identified genuine issues of material fact precluding summary judgment in relation to damages.

Valuation of Appellants' Shares

Repeating the same arguments, appellants also challenge the district court's determination that they sell their shares to South Walker Bay for zero dollars per share.

When there are no genuine issues of "material fact as to whether unfairly prejudicial conduct occurred, a district court may . . . exercise its broad equitable authority to grant a buy-out" pursuant to statute. *Lund*, 924 N.W.2d at 279 (reviewing a buy-out motion made pursuant to the 2014 versions of the Minnesota Business Corporation Act, Minn. Stat. §§ 302A.001-.92 (2014), and the Minnesota Limited Liability Company Act, Minn. Stat. §§ 322B.01-.975 (2014)).

Upon a company's request, a district court may dissociate a member from an LLC by court order if the person:

> (i) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities;
>
> (ii) 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; or
>
> (iii) has engaged, or is engaging, in conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member.

Minn. Stat. § 322C.0602(5).

Appellants concede that they breached their fiduciary duty and do not contest the district court order that they divest their shares. They contest only the district court's valuation of South Walker Bay and its order requiring that they sell their interest in South Walker Bay for zero dollars per share.

Kray's accounting values South Walker Bay's assets at $1,392,744. As the district court determined from the undisputed facts, that amount is less than the company's liabilities, which total $2,036,068. The district court determined that appellants provided no evidence disputing either calculation. Considering South Walker Bay is worth less than its liabilities, the district court appropriately required appellant to sell their interest in the company for zero dollars per share.

Because there are no genuine issues of material fact, the district court properly granted summary judgment in favor of South Walker Bay.

II. The district court erred by awarding attorney fees pursuant to Minn. Stat. § 322C.0906.

Appellants argue that the district court erred by awarding attorney fees to South Walker Bay pursuant to Minn. Stat. § 322C.0906, claiming that the provision only applies to derivative actions and, in that circumstance, the individual member as plaintiff—not the LLC—is entitled to attorney fees. Respondents argue that the district court did not err in awarding attorney fees because the award was to all plaintiffs, including the individual members. We agree with appellants.

"The interpretation of a statute is a question of law . . . review[ed] de novo." *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). "When interpreting statutes, our function is to ascertain and effectuate the intention of the legislature." *Anker v. Little*, 541 N.W.2d 333, 336 (Minn. App. 1995), *rev. denied* (Minn. Feb. 9, 1996). Appellate courts "first look to see whether the statute's language, on its face, is clear or ambiguous." *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). In doing so, "words and phrases are construed according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08(1) (2024). "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Schroedl*, 616 N.W.2d at 277 (quotation omitted).

"If the statute is free from ambiguity, we look only at its plain language." *Anker*, 541 N.W.2d at 336. "[I]n the absence of ambiguity, [this court] will not disregard the letter of the law in pursuit of its purpose." *State v. Hicks*, 583 N.W.2d 757, 759 (Minn. App. 1998), *rev. denied* (Minn. Oct. 20, 1998). "A statute should be interpreted, whenever possible, to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Schroedl*, 616 N.W.2d at 277 (quotation omitted). But "if the statute's literal meaning leads to an absurd result . . . we may look beyond the language and examine other indicia of legislative intent." *Anker*, 541 N.W.2d at 336. This rule, however, "is not available to override the plain language of a clear and unambiguous statute, except in an exceedingly rare case in which the plain meaning of the statute utterly confounds the clear legislative purpose of the statute." *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 651 (Minn. 2012) (quotation omitted).

Lastly, "this court cannot add to a statute what the legislature has either purposely omitted or inadvertently overlooked." *Christiansen v. Univ. of Minn. Bd. of Regents*, 733 N.W.2d 156, 159 (Minn. App. 2007), *rev. denied* (Minn. Aug. 21, 2007). The court's duty is to "interpret the policy that the Legislature has already determined in the statutory language at issue." *In re Guardianship of Tschumy*, 853 N.W.2d 728, 741 n.10 (Minn. 2014). We are limited to "correcting errors" and do not create public policy. *LaChapelle v. Mitten*, 607 N.W.2d 151, 159 (Minn. App. 2000), *rev. denied* (Minn. May 16, 2000). Any change to a statute's language "must come from the legislature." *Martinco v. Hastings*, 122 N.W.2d 631, 638 (Minn. 1963).

Minnesota Statutes section 322C.0906 provides that:

> Subdivision 1. Ownership of proceeds. Except as otherwise provided in subdivision 2:
>
> (1) any proceeds or other benefits of a *derivative action* under section 322C.0902, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

> (2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.
>
> Subd. 2. Expenses awarded. *If a derivative action under section 322C.0902 is successful* in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company.

(Emphasis added.)

Here, there was no derivative action. The breach-of-fiduciary-duty claim by South Walker Bay is a direct action against appellants. Subdivision 2 allows attorney fees following a successful *derivative* action but says nothing about a direct action by the LLC. That is, under the statute's plain language, the district court may award attorney fees only after a successful derivative action. *See Anker*, 541 N.W.2d at 336.

As stated above, we "cannot add to a statute what the legislature has either purposely omitted or inadvertently overlooked." *Christiansen*, 733 N.W.2d at 159. Because Minn. Stat. § 322C.0906 does not provide for an LLC to recover attorney fees, we conclude that the district court erred by awarding attorney fees to South Walker Bay.

And, because this was a direct action by South Walker Bay, the district court erred by awarding attorney fees pursuant to Minn. Stat. § 322C.0906.

III. The district court properly dismissed the minority members' claims because the claims belong to the LLC.

The individual members challenge the district court's dismissal of their claims for (a) breach of fiduciary duty, (b) violation of Minn. Stat. § 322C.0410 (providing members the right to company information), (c) violation of Minn. Stat. § 322C.0409 (outlining the standard of conduct for members), and (d) violation of Minn. Stat. § 322C.0701 (defining events causing dissolution).

A member of an LLC may only bring a direct action if the member can plead and prove "an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company." Minn. Stat. § 322C.0901, subd. 2.

The minority members sought, as a remedy for their individual breach-of-fiduciary-duty claim, $57,334.97 in damages for unpaid distributions between 2016 and 2023. As the district court noted, South Walker Bay could not distribute dividends because of appellants' misappropriation of the LLC's funds and, therefore, their claim is solely the result of harm suffered by South Walker Bay. *See Wessin v. Archives Corp.*, 592 N.W.2d 460, 465 (Minn. 1999) (noting that claim for misappropriation of corporate assets is a direct claim of the corporation). The individual members' claim for breach of fiduciary duty was, therefore, properly dismissed.

The individual members' claim under Minn. Stat. § 322C.0409, which outlines the standard of conduct for members of LLCs, is rooted in appellants' breaches of fiduciary duty. As we have explained, the breach-of-fiduciary-duty claim rightfully belongs to South Walker Bay and, therefore, the individual members' claim under Minn. Stat. § 322C.0409 was properly dismissed.

As to the individual members' claims under Minn. Stat. §§ 322C.0701 (requiring dissolution when a member has engaged in illegal, fraudulent, or oppressive conduct), and .0410 (providing members the right to company information), their counsel stated during oral argument that Kray was retained to do an accounting because they were not provided with the information sought. It was this accounting which led to the damages judgment in favor of South Walker Bay. And it is the conduct set forth in the remaining statutory provisions that led to the district court's summary judgment for breach of fiduciary duty, which we affirm.

In sum, because there are no genuine issues of material fact, we affirm the district court's grant of summary judgment in favor of South Walker Bay and its order requiring appellants to sell their interest in the company for zero dollars per share. But, because the district court erred by granting South Walker Bay attorney fees pursuant to Minn. Stat. § 322C.0906, we reverse the attorney-fee award. Finally, because the members' claims were the same that were directly brought by South Walker Bay, we affirm the district court's dismissal of respondent-individuals' claims.

Affirmed in part and reversed in part.