This opinion is nonprecedential except as provided by Minn.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
A24-1363

Robyn Johnson,
Respondent,

vs.

Elizabeth Wright, et al.,
Defendants,

Amit Sela, et al.,
Defendants,

LiveWell Senior Communities Management, LLC,
Appellant.

Filed July 21, 2025
Affirmed
Wheelock, Judge

Hennepin County District Court
File No. 27-CV-20-2012

Daniel J. Cragg, Vince C. Reuter, Anne N. St. Amant, Eckland & Blando LLP, Minneapolis, Minnesota (for respondent)

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Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges the district court's denial of its posttrial motion for judgment as a matter of law or a new trial, arguing that the district court erred in instructing the jury and that it is entitled to judgment in its favor as a spoliation sanction. We affirm.

FACTS

Appellant LiveWell Senior Communities Management LLC manages The Moments, a senior-living and memory-care facility. Respondent Robyn Johnson was LiveWell's executive director from 2017 to late 2019. This appeal arises out of Johnson's breach-of-employment-agreement suit against LiveWell.[1]

LiveWell's owner, defendant Elizabeth Wright, hired Johnson as executive director of LiveWell in June 2017.[2] Pursuant to Johnson's employment contract, LiveWell could terminate Johnson's employment for "cause."

Over the time that Johnson worked for LiveWell, she perceived increasing unpredictability and hostility in her work environment. After Johnson observed a dispute between two of her supervisors, she began using her phone to record interactions with each

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[1] We take the following facts from the evidence received at the jury trial, viewing the evidence in the light most favorable to the verdict, and rely on the rest of the record when helpful to understand the issues on appeal.

[2] Johnson's employment contract identifies the employer as Noble Living at Home Ltd. because Wright initially employed Johnson under Noble Living. Wright and her partners in LiveWell decided to part ways. If Wright's partners bought her out, Wright intended to proceed with a new venture, Noble Living; however, Wright chose to buy out her partners' ownership interests in LiveWell, becoming its sole owner and hiring Johnson.

of them. Amid these conflicts, Johnson's supervisors gave her conflicting instructions about to whom she should listen and how she should communicate with them.

Eventually, LiveWell terminated Johnson for cause. Johnson's termination letter detailed misconduct in which LiveWell alleged Johnson had engaged, including attending a conference during work hours that Wright had not approved, adding unused paid time off back onto her timecard, lying about sick time, and participating in industry boards and committees without Wright's consent.

A day after receiving her termination letter, Johnson accessed LiveWell's data system and printed documents from it. Johnson also executed a factory reset on a tablet that LiveWell had issued to her, explaining that she did so because she had been using it for personal entertainment.

In early 2020, Johnson sued LiveWell, Wright, Wright's husband, and their related business entities, asserting numerous claims. LiveWell did not assert any counterclaims against Johnson but did raise some affirmative defenses, including unclean hands. Ultimately, only Johnson's claims for breach of contract, hostile work environment, fraudulent misrepresentation, and promissory estoppel were presented to the jury.

As the lawsuit progressed and the parties exchanged discovery, LiveWell learned that Johnson had been recording workplace conversations with her phone. LiveWell did not know about the recordings when Johnson was LiveWell's employee. In a deposition, Johnson acknowledged that, because LiveWell manages a senior-living and memory-care facility and the conversations Johnson had been recording involved discussion of patient information, her recordings could constitute a HIPAA[3] violation. Later, while discovery was still ongoing, Johnson traded in the phone she had used to record workplace conversations for a new phone—before LiveWell had the opportunity to forensically examine it. Additionally, during trial, Johnson explained that she deleted at least some of the recordings from her phone while the phone was in her possession.

LiveWell argued that Johnson's acts—her factory reset of the tablet, deletion of recordings, and trading in of the phone she used to record conversations—constituted spoliation of evidence. In advance of trial, LiveWell moved the district court to sanction Johnson, requesting that it either exclude, or issue an adverse-inference instruction for, the produced recordings Johnson made of workplace conversations while she was still employed at LiveWell. However, LiveWell made no argument that the district court should award judgment in its favor as a sanction for Johnson's spoliation. The district court admitted Johnson's produced recordings into evidence but granted LiveWell's request for it to read an instruction permitting the jury to draw an adverse inference from Johnson's actions.

Johnson's lawsuit proceeded to a jury trial. On the fifth day of trial, Johnson produced a box of previously undisclosed evidence. The district court ordered the parties to inventory the box and determine whether any of its contents constituted prejudicial new evidence.

[3] The Health Insurance Portability and Accountability Act of 1996 protects the privacy and security of individuals' protected health information. Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936.

LiveWell argued that the district court should instruct the jury on the after-acquired-evidence doctrine to limit the amount of damages it may award Johnson, proposing the following instruction:

> Damages for breach of an employment contract are the amount of compensation the employee who is wrongfully discharged would have received, if the contract had been carried out.
>
> However, the after-acquired evidence doctrine may limit an employee's damages. The after-acquired evidence doctrine applies when an employee is fired for an unlawful reason but the employer later learns of other conduct that would have resulted in termination had it come to the employer's attention while the employee remained employed. The after-acquired evidence cuts off the employee's damages after the offending conduct.

The district court did not include this instruction. In its posttrial motion for judgment as a matter of law or a new trial, LiveWell argued that the district court should have instructed the jury on the after-acquired-evidence doctrine because LiveWell might have terminated Johnson's employment had it known about her surreptitious workplace recordings and, therefore, the jury should have been allowed to "cut off" the damages to Johnson.

LiveWell also argued that the district court should instruct the jury about how Johnson had forfeited recovery by breaching her fiduciary duty to LiveWell, proposing the following instruction:

> If an employee or officer has fiduciary duties to his or her employer, and breaches one or more of those fiduciary duties, damages to the employer can include some or all of the compensation paid by the employer or officer during the period in which they were disloyal (i.e. breaching one or more of their fiduciary duties).

The district court did not include this instruction, either. The district court, however, did read to the jury LiveWell's requested permissive adverse-inference instruction:

> I'd like to give you an instruction on the failure to produce evidence, and the inference that may arise from that. Minnesota law allows you to draw an unfavorable inference based upon a party's failure to produce evidence that was in that party's possession and control prior to and/or during the litigation. If either party does not produce evidence that the party could reasonably be expected to produce and fails to give a reasonable explanation, you may decide the evidence would've been unfavorable to that party.
>
> In this case, the Court determined that Robyn Johnson failed to preserve evidence that was in her possession and which should've been preserved by Robyn Johnson. Robyn Johnson's duty to preserve evidence arose on the day she reasonably anticipated litigation in this matter, which the Court finds was October 2nd, 2019, the day that her employment was terminated.
>
> After that date, Robyn Johnson caused her work [tablet] to be formatted, and all information erased. After that date, after this lawsuit commenced, Robyn Johnson deleted audio recordings she had made while she was still an employee. After that date, after this lawsuit commenced, Robyn Johnson traded in the [cell phone] on which she had made and from which she deleted those recordings.
>
> You are permitted to infer from those facts that the contents of that missing evidence, if produced, would have been favorable to Elizabeth Wright, Amit Sela, LiveWell Senior Communities Management, LLC, The Moments, LLC, and The Moments of Lakeville, LLC, and unfavorable to Robyn Johnson.

The jury found that LiveWell breached its employment contract with Johnson and awarded her $508,333.31. The jury did not find for Johnson on any of her other claims.

LiveWell filed a motion for judgment as a matter of law or a new trial, arguing that the district court should have instructed the jury regarding after-acquired evidence and breach of fiduciary duty. Additionally, LiveWell argued that the evidence cannot support the jury's conclusion that LiveWell breached Johnson's employment contract. But LiveWell did not argue that the district court should award it judgment as a sanction for Johnson's spoliation. The district court denied LiveWell's posttrial motion.

LiveWell appeals.

DECISION

LiveWell makes three arguments on appeal. We first review whether the district court abused its discretion when it denied LiveWell's motion for a new trial based on the district court's decision not to instruct the jury on the after-acquired-evidence doctrine. Then we review whether the district court abused its discretion when it denied LiveWell's motion for a new trial based on the district court's decision not to instruct the jury on Johnson's potential forfeiture of contract damages due to her alleged breach of fiduciary duty. Finally, we consider whether LiveWell forfeited its argument that the district court should have granted LiveWell judgment as a sanction for Johnson's spoliation of evidence.

I. The district court did not abuse its discretion when it denied LiveWell's motion for a new trial based on its decision not to instruct the jury on the after-acquired-evidence doctrine.

LiveWell argues that the district court should have given its after-acquired-evidence jury instruction because, under *Von Heyne v. Tompkins*, 93 N.W. 901 (Minn. 1903), Minnesota courts recognize the doctrine. Importantly, LiveWell clarified its request that the district court instruct the jury on the after-acquired-evidence doctrine in its reply memorandum in support of its motion for a new trial, explaining that it "does not argue [for] . . . a *total bar* to breach of contract claims," but rather argues for a limit to Johnson's damages. Johnson argues that LiveWell did not properly preserve this argument for appeal.

The district court ruled that the "Minnesota Supreme Court has not directly addressed the doctrine of after-acquired evidence in breach of employment contract claims." Further, the district court stated that, even if Minnesota had adopted the after-acquired-evidence doctrine in this context, *Ross v. Garner Printing Co.*, 285 F.3d 1106, 1112 (8th Cir. 2002), provides persuasive authority demonstrating that its ruling was not prejudicial. The parties did not cite *Von Heyne* as authority in their posttrial submissions to the district court; rather, LiveWell relies on it for the first time on appeal.

Appellate courts "review a district court's decision to grant or deny a new trial for an abuse of discretion." *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018) (citing *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010)). "The district court has broad discretion in determining jury instructions and [appellate courts] will not reverse in the absence of abuse of discretion." *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002). "An appellate court should view the instructions as far as possible from the standpoint of the total impact or impression upon the jury." *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 159 (Minn. 2002). "District courts are allowed considerable latitude in selecting language used in the jury charge and determining the propriety of a specific instruction." *Id.* If a jury "instruction destroys the substantial correctness of the charge as a whole, causes a miscarriage of justice, or results in substantial prejudice, the error requires a new trial." *Id.* This court must order a new trial if a "jury instruction was erroneous and such error was prejudicial," or "if the instruction was erroneous and its effect cannot be determined." *Id.*

A district court abuses its discretion if its findings of fact are unsupported by the record, if it misapplies the law, or if it resolves the question in a manner that is contrary to logic and the facts on record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022); *see also Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115, 127 (Minn. App. 2017), *aff'd*, 913 N.W.2d 687 (Minn. 2018). "It is an elementary principle of appellate procedure that a party may not raise an issue or argument for the first time on appeal and thereby seek appellate relief on an issue that was not litigated in the district court." *Doe 175 by Doe 175 v. Columbia Heights Sch. Dist., ISD No. 13*, 842 N.W.2d 38, 42 (Minn. App. 2014).

The after-acquired-evidence doctrine may apply when an employee is terminated for an unlawful reason, but the employer later learns of other conduct that would have resulted in the employee's termination had it come to the employer's attention at the time. *McKennon v. Nashville Banner Publ'g Co.*, 513 U.S. 352, 362 (1995). The doctrine *limits* the employee's damages to the period "from the date of the unlawful discharge to the date the new information was discovered." *Id.* Minnesota courts may apply this doctrine in employment-discrimination cases. *Frey v. Ramsey Cnty. Cmty. Hum. Servs.*, 517 N.W.2d 591, 596 (Minn. App. 1994); *accord Meads v. Best Oil Co.*, 725 N.W.2d 538, 544 (Minn. App. 2006), *rev. denied* (Minn. Feb. 20, 2007).

In the employment-discrimination context, when an employer can show that an employee's "wrongdoing was of such severity that the employee in fact would have been terminated on those grounds alone if the employer had known of it at the time of the discharge, reinstatement and frontpay are not proper remedies." *Meads*, 725 N.W.2d at

546 (quotation omitted). However, the employee may recover backpay "from the date of the unlawful discriminatory employment practice to the date the new information was discovered." *Id.* (quotation omitted).

Relying on *Von Heyne*, LiveWell argues that Minnesota courts have adopted the after-acquired-evidence doctrine outside of the employment-discrimination context. 93 N.W. at 901. Thus, we must interpret *Von Heyne*. This court interprets supreme court caselaw de novo. *State v. O'Neill*, 945 N.W.2d 71, 76 (Minn. App. 2020), *rev. denied* (Minn. Aug. 11, 2020).

In *Von Heyne*, a farm owner, Tompkins, terminated his employee, Von Heyne, because Von Heyne disregarded Tompkins's directions and requests. 93 N.W. at 902. Tompkins owned a stock farm in Minnesota, and Von Heyne was a skilled cattle breeder. *Id.* Tompkins and Von Heyne entered into an employment contract for 23 months. *Id.* Once the parties executed their agreement, Tompkins traveled to California, and the two communicated by letter and telegram. *Id.* at 902, 905.

While he was in California, Tompkins learned that two different people were planning to purchase a cow from his stock farm. *Id.* at 904. Tompkins wrote to Von Heyne, telling him not to sell the cow to either buyer until Tompkins could sort out "what was right and just between the parties." *Id.* Von Heyne wrote back that one party was offering $100 more than the other. *Id.* Tompkins maintained that Von Heyne should not sell the cow until he had decided what to do, but Von Heyne disregarded Tompkins's direction and sold the cow to the buyer offering more money. *Id.*

Later, a prospective cattle farmer from New York named McAdam began corresponding with Von Heyne. *Id.* at 905. McAdam wanted to purchase many animals from Tompkins's herd, including a prized cow named Mercedes. *Id.* While corresponding with Von Heyne, McAdam stated that if he purchased "a 'bunch' of cattle," he would like Von Heyne to travel out to New York with them. *Id.* Von Heyne communicated McAdam's interest to Tompkins, and Tompkins, writing back to Von Heyne from California, explained that a trip to New York could probably be arranged. *Id.*

Von Heyne, without disclosing it to Tompkins, began corresponding with McAdam about a partnership with him in New York. *Id.* When Von Heyne wrote to Tompkins about McAdam's offer to purchase Mercedes and other high-value cattle, Tompkins wrote back that he did "not want [Von Heyne] to sell any of those high-record cattle, nor any of their progeny, until I have agreed to the same." *Id.* Tompkins directed Von Heyne to "[f]ollow these instructions exactly." *Id.* Nevertheless, Von Heyne sold the cattle, at a discount, to McAdam. *Id.* Tompkins returned from California, investigated Von Heyne's activities, and terminated his employment. *Id.* at 902. When Tompkins terminated Von Heyne's employment, "he knew nothing about these letters, except that McAdam was negotiating for certain cattle, and, if the purchase was completed, that [McAdam] wanted [Von Heyne] to go with him. Certainly [Tompkins] did not know that a partnership was contemplated, with his own stock." *Id.* at 905.

Von Heyne sued Tompkins, and the matter went to a jury trial. *Id.* at 902. The jury returned a verdict for Von Heyne and awarded him $4,026.44. *Id.* at 903. Tompkins moved for judgment notwithstanding the verdict, and although the district court denied

Tompkins's motion, it reduced Von Heyne's award to $2,026.44. *Id.* On appeal, the supreme court observed that it could not determine whether Von Heyne "considered the [employment] contract as rescinded by the discharge, and sought to recover the value of his services upon quantum meruit, or treated it as still in force, in so far as his right to recover his share of the profits was concerned." *Id.* at 902. However, the supreme court assumed that Von Heyne's "complaint treated the contract as having been rescinded by the discharge, and that this action was brought to recover upon quantum meruit." *Id.* at 903.

The supreme court concluded that Von Heyne's numerous "acts of disobedience" rendered him "not entitled to any compensation whatsoever for his services." *Id.* at 907. The supreme court concluded that the district court erred in submitting the matter to the jury and in denying Tompkins's motion for judgment notwithstanding the verdict, and it remanded the case "with directions that judgment be entered for [Tompkins]." *Id.*

Our review of *Von Heyne* persuades us that there is a difference between its holding and Minnesota's after-acquired-evidence doctrine as it has been applied in employment-discrimination cases.[4] We observe that, while *Von Heyne* stands for a *bar* to recovery, 93 N.W. at 907, Minnesota's after-acquired-evidence doctrine in employment-discrimination cases only *limits* recovery, rather than barring it completely.

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[4] LiveWell argues that this court's interpretation of *Von Heyne* in *Chalupsky v. Dobbs Temp. Servs.*, No. C3-02-1121, 2003 WL 105478, at *3 (Minn. App. Jan. 14, 2003), a nonprecedential opinion, is consistent with how LiveWell interprets *Von Heyne* here. We are not persuaded because *Chalupsky* cited *Von Heyne* only for the proposition that "[d]isobedience of a reasonable order justifies an employer's rescission of the employment agreement and discharge of the employee." *Id.*

Indeed, Minnesota has applied the after-acquired-evidence doctrine in employment-discrimination cases, allowing the employee to recover "from the date of the unlawful discriminatory employment practice to the date the new information was discovered." *Meads*, 725 N.W.2d at 546 (quotation omitted). But this is a *limit* rather than a *bar* to recovery. Minnesota adopted this doctrine in the employment-discrimination context in an attempt to balance an employer's "important interest in, and discretion over, the selection of their workforce," *id.* at 545, with the legislature's desire to discourage employment discrimination, *id.* at 546. Because Minnesota courts have not extended the employment-discrimination version of the after-acquired-evidence doctrine to breach-of-employment-agreement claims, we are not persuaded that the district court abused its discretion when it did not instruct the jury on the after-acquired-evidence doctrine.

Having concluded that the district court did not err in declining to instruct the jury on the after-acquired-evidence doctrine, we turn to LiveWell's reliance on *Von Heyne*.

As explained above, *Von Heyne* stands for a *bar*, rather than a *limit*, to recovery. 93 N.W. at 907. In its reply memorandum in support of its posttrial motion, LiveWell stated that it "does not argue [for] . . . a *total bar* to breach of contract claims." Because LiveWell did not argue for a total bar to recovery in district court and because *Von Heyne* stands for a total bar to recovery, we conclude that LiveWell forfeited its argument that *Von Heyne* supports its position on appeal. *See Doe 175*, 842 N.W.2d at 42-43. Additionally, we conclude that the district court did not abuse its discretion when it denied

LiveWell's posttrial motion for a new trial based on the district court's denial of LiveWell's request to instruct the jury on the after-acquired-evidence doctrine.

II. The district court did not abuse its discretion when it did not instruct the jury on forfeiture of compensation for breach of fiduciary duty.

LiveWell next argues that the district court abused its discretion by denying LiveWell's motion for a new trial based on the district court's decision not to instruct the jury on forfeiture of compensation for breach of fiduciary duty. LiveWell specifically asserts that Johnson was on notice of LiveWell's argument that she had breached her fiduciary duties and that, although LiveWell acknowledges that it did not include breach of fiduciary duty in its pleadings as an affirmative defense, it argues that the "affirmative defense of unclean hands encompasses forfeiture of compensation based on breach of fiduciary duty."

Johnson argues that the district court correctly declined to give LiveWell's jury instruction regarding breach of fiduciary duty because LiveWell did not bring a claim or defense for breach of fiduciary duty, the proposed jury instruction was not compatible with the special verdict form, and LiveWell's defense of unclean hands does not apply to the district court's rejection of its fiduciary-duty jury instruction. The district court denied LiveWell's posttrial motion, reasoning that the instruction inappropriately presumed that Johnson breached her fiduciary duty, LiveWell failed to plead this theory, and LiveWell presented these facts to the jury such that the jury was able to consider them in determining the damages award.

Appellate courts "review a district court's decision to grant or deny a new trial for an abuse of discretion." *Christie*, 911 N.W.2d at 838. The abuse-of-discretion standard of review is set forth above.

"Minnesota is a notice-pleading state." *Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 500 (Minn. 2021) (quotation omitted). It allows plaintiffs to plead their case "by way of a broad general statement which may express conclusions rather than . . . a statement of facts sufficient to constitute a cause of action." *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963); *see also* Minn. R. Civ. P. 8.01 ("A pleading which sets forth a claim . . . shall contain a short and plain statement of the claim showing the pleader is entitled to relief and a demand for judgment for the relief sought.").

LiveWell argues that, because it described Johnson's actions as a breach of her fiduciary duty in some of its court filings and a few times during trial, Johnson was on notice that LiveWell had raised it and that, therefore, LiveWell was entitled to the following jury instruction:

> If an employee or officer has fiduciary duties to his or her employer, and breaches one or more of those fiduciary duties, damages to the employer can include some or all of the compensation paid by the employer or officer during the period in which they were disloyal (i.e. breaching one or more of their fiduciary duties).

In arguing that its various filings and statements made during trial put Johnson on notice of this argument, LiveWell points to two paragraphs from its summary-judgment motion:

> 1. Because of Plaintiff's failure in the performance of her material duties and responsibilities to the Company, in addition

> to Plaintiff's breach of fiduciary duty, willful dishonesty and misconduct, Plaintiff was properly terminated for Cause.
>
> 2. Plaintiff was terminated from her position with the Company based on her failure to perform material duties and responsibilities, her willful dishonesty and misconduct, and breach of fiduciary duties.

LiveWell also points to portions of Johnson's deposition during which it asked Johnson, "One of the questions I had for you was boy, it seems interesting that as the president of The Moments you had personal files of all sorts of Moments documents despite your fiduciary duty to look out for the best interest of The Moments. Do you remember that question?" LiveWell asked Johnson additional questions about whether her retention of certain documents constituted a breach of HIPAA. Finally, in support of its contention that Johnson was on notice of LiveWell's argument that Johnson had breached her fiduciary duty, LiveWell cites a litany of instances during the jury trial when it used the term "breach of fiduciary duty."

Based on those filings, statements, and discovery, LiveWell reasons that, because the issue at trial was about whether LiveWell had terminated Johnson's employment "for cause" and her employment contract included breach of fiduciary duty as "cause" for termination, she should have been on notice of breach of fiduciary duty as an affirmative defense or as a counterclaim.

Having reviewed the portions of the record that LiveWell cites to support its contention that Johnson was on notice of its breach-of-fiduciary-duty argument, we are not persuaded. LiveWell did not assert breach of fiduciary duty as an affirmative defense or counterclaim. And its effort to grasp enough passing references to Johnson's fiduciary duties at various points during the proceedings does not change that. Although LiveWell is correct that it could have raised breach of fiduciary duty by Johnson, it did not do so, and its argument disregards this court's standard of review.

"An appellate court should view the instructions as far as possible from the standpoint of the total impact or impression upon the jury." *Morlock*, 650 N.W.2d at 159. "The district court has broad discretion in determining jury instructions and [appellate courts] will not reverse in the absence of abuse of discretion." *Hilligoss*, 649 N.W.2d at 147. "District courts are allowed considerable latitude in selecting language used in the jury charge and determining the propriety of a specific instruction." *Morlock*, 650 N.W.2d at 159. If a jury "instruction destroys the substantial correctness of the charge *as a whole*, causes a miscarriage of justice, or results in substantial prejudice, the error requires a new trial." *Id.* (emphasis added). With this standard in mind, we are not persuaded that passing references to Johnson's fiduciary duty would have adequately informed a jury of Johnson's fiduciary duty. Nor did the passing references explain how her actions may have constituted a breach of it such that the district court abused its discretion by denying LiveWell's request for the jury instruction about breach of fiduciary duty. Upon viewing the jury instructions "as far as possible from the standpoint of the total impact or impression upon the jury," *id.*, we conclude that the district court did not abuse its discretion by denying LiveWell's motion for a new trial on this basis.[5]

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[5] We observe that LiveWell also argues that its affirmative defense of unclean hands somehow encompassed either an affirmative defense or a counterclaim for breach of fiduciary duty. LiveWell does not cite caselaw to support its assertion that its defense of unclean hands inherently includes an unpleaded defense or counterclaim for breach of

III. LiveWell forfeited its argument that the district court abused its discretion in denying LiveWell's motion for judgment based on Johnson's spoliation of evidence.

Finally, LiveWell argues that, because Johnson's spoliation of evidence was egregious, the district court abused its discretion when it did not grant judgment in its favor and limited its sanction of Johnson to a permissive adverse-inference instruction. Johnson argues that LiveWell forfeited the spoliation argument by not presenting it to the district court and that the district court's choice of sanctions was within its discretion. We agree with Johnson.

In advance of trial, LiveWell moved to exclude Johnson's produced audio recordings as a sanction for her spoliation of others. In the alternative, LiveWell requested an adverse-inference jury instruction. Later, in its posttrial motion, LiveWell argued that it should receive judgment as a matter of law on Johnson's claim for breach of employment contract. On appeal, LiveWell now argues that, as a sanction for Johnson's spoliation, the district court should have awarded LiveWell judgment as a matter of law. However, LiveWell never requested judgment as a sanction for Johnson's spoliation of evidence. As we have explained above, parties "may not raise an issue of argument for the first time on appeal." *Doe 175*, 842 N.W.2d at 42. Because LiveWell never made this argument to the

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fiduciary duty; because we decline to address arguments that are made without supporting authority, *see Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *rev. denied* (Minn. Apr. 26, 2017), we do not address that argument.

district court, it did not preserve this argument for appeal. *See id.* Therefore, we decline to consider this argument.

Affirmed.