STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1671
A25-0125

Shawnae Feltus,
Respondent,

vs.

Jeffrey Niemala, et al.,
Appellants,

and

RE/MAX Thousand Lakes,
Third-Party Defendant.

Filed August 25, 2025
Affirmed; motions granted in part and denied in part
Johnson, Judge

Itasca County District Court
File No. 31-CV-19-3246

Erik J. Honkanen, Honkanen Law Firm, S.C., Virginia, Minnesota (for respondent)

Miles John Ringsred, Duluth, Minnesota (for appellants)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

This case concerns a sale of residential property that occurred more than a decade ago. The buyer sued the seller to enforce a provision in the purchase agreement that required the seller to provide marketable title. During trial, the parties entered into a settlement agreement, which was stated orally on the record and later embodied in a court order. The seller agreed "to do whatever is needed to transfer marketable title of the real property" within 90 days. Eleven months later, the district court found that the seller had not yet delivered marketable title, found the seller in constructive civil contempt, ordered the seller to initiate a quiet-title action within 45 days to resolve specified title defects, and awarded the buyer approximately $6,000 for the attorney fees and expenses incurred in bringing the contempt motion. We affirm.

FACTS

In 2011, Jeffrey Niemala purchased a lot with a mobile home in Itasca County. In June 2013, he sold the property to Shawnae Feltus on a contract for deed for $49,000, with the final payment due in 2023. In the purchase agreement, Niemala agreed to use his "best efforts to provide marketable title" by the closing date in January 2014 or within 30 days thereafter. In an addendum to a recorded deed dated February 2014, Niemala and his wife, Linda Niemala, agreed to "take the necessary action required to remove the title objection on the property for any interest claimed by" certain former owners by December 2019.

In October 2019, Jeffrey Niemala gave Feltus notice of cancellation of the contract for deed. In November 2019, Feltus commenced this action against the Niemalas. She asserted numerous claims and requested, among other things, an order declaring that she is the owner of a fee-simple estate in the property and an order requiring the Niemalas to provide her with marketable title. In June 2021, the district court granted Feltus's motion for partial summary judgment and denied the Niemalas' motion for summary judgment.

This court affirmed in part, reversed in part, and remanded for further proceedings. *Feltus v. Niemala*, No. A22-0673, 2023 WL 125337, at *1 (Minn. App. Jan. 9, 2023).

The case went to trial in September 2023. During the second day of trial, the parties reached a settlement agreement, which was stated orally on the record. In November 2023, the district court filed an order that restated two provisions of the settlement agreement as follows:

> Defendants, Jeffrey Niemala and Linda Niemala, agree to do whatever is needed to transfer marketable title of the real property, which is the subject of this lawsuit, and also to deliver title of the mobile home located on the property within 90 days from September 13, 2023. Such work needed to accomplish this includes, but is not limited to, contacting the Department of Motor Vehicles (DMV) in an attempt to obtain title for the mobile home and/or initiating a declaratory judgment action, if needed, for purposes of obtaining the title to the mobile home.
>
> The parties agree for the Court to retain jurisdiction for postjudgment issues, which are contemplated to be an Order to Show Cause in the event there is a failure to comply with the terms of the agreement and the order of the Court approving the agreement. Relief in the Order to Show Cause may include fees, costs, and attorney's fees.

In December 2023, the Niemalas' attorney provided Feltus's attorney with a title-insurance company's commitment to insure the title for only $10,000. The title commitment states that title purportedly was conveyed to Jeffrey Niemala by the widow of one of the former owners of the property but that the deceased former owner's interest "will have to be terminated by an appropriate probate proceeding or by a quiet-title action resulting in title being transferred to Jeffrey R. Niemala." In January 2024, Feltus's attorney consulted with a title company, which identified additional title defects. Feltus's attorney communicated these concerns to the Niemalas' attorney in February 2024.

In March 2024, Feltus filed a motion for an order to show cause why the Niemalas should not be held in contempt. While the motion was pending, the Niemalas consulted with a title company, which reviewed Feltus's evidence and agreed that additional steps were necessary to deliver marketable title.

In May 2024, the district court held a hearing on Feltus's contempt motion. The Niemalas argued that they had been acting diligently and in good faith to deliver marketable title and that Feltus had not identified the steps necessary to make title marketable. In August 2024, the district court issued an order finding the Niemalas in contempt because they had "failed to do whatever is needed to transfer marketable title to [Feltus] within 90 days of September 13, 2023." The district court awarded Feltus attorney fees and expenses totaling $6,295.50. The Niemalas appeal.

DECISION

I. Finding of Contempt

The Niemalas' primary argument is that the district court erred by finding them in contempt. We construe this argument to have five parts, which we address in turn. We apply an abuse-of-discretion standard of review to the district court's contempt order. *Sehlstrom v. Sehlstrom*, 925 N.W.2d 233, 239 (Minn. 2019).

A.

The Niemalas argue that the district court's November 2023 order did not "clearly define the acts to be performed." A district court may find a person in contempt only if a "decree of the court clearly defined the acts to be performed." *Hopp v. Hopp*, 156 N.W.2d 212, 216 (Minn. 1968). If a contempt motion is based on a settlement agreement, the specific terms of the agreement must have been stated in a court order; it is insufficient if a court issued an order that "merely acknowledged that the parties have settled their pending lawsuit by an order of approval without imposing any express commands or prohibitions upon" the parties. *Mr. Steak, Inc. v. Sandquist Steaks, Inc.*, 245 N.W.2d 837, 838-39 (Minn. 1976).

The district court's November 2023 order required the Niemalas "to do whatever is needed to transfer marketable title." The Niemalas contend that "this language is impermissibly vague, as it fails to identify the specific actions required." In its August 2024 order, the district court stated that the requirement of delivering marketable title "has been the same since" the parties' purchase agreement in 2013. Indeed, the court's November 2023 order simply restates the Niemalas' contractual promise in the purchase agreement (to deliver marketable title by not later than 30 days after closing) and their subsequent contractual promise in an addendum to the recorded deed (to "take the necessary action required to remove the title objection on the property for any interest claimed by" the former owners by December 2019). The district court also reasoned that the term "marketable title" is a fixed, objective concept. The district court cited *Mattson Ridge, LLC v. Clear Rock Title, LLP*, 824 N.W.2d 622 (Minn. 2012), in which the supreme court explained that the term "has a well-defined and well-understood meaning," which is title "that is free from reasonable doubt; one that a prudent person, with full knowledge of all the facts, would be willing to accept." *Id.* at 628 (quotation omitted). Given the caselaw defining marketable title, the contractual promises made by the Niemalas, and the terms of the district court's November 2023 order, we conclude that the acts necessary to avoid a contempt finding were clearly defined.

B.

The Niemalas argue that the district court erred by allowing Feltus to change the terms of the settlement agreement by adding requirements. This argument mischaracterizes the district court's contempt order. Throughout this case, Feltus has sought to enforce the Niemalas' promises to deliver marketable title. After the November 2023 order, the parties' attorneys discussed specific issues related to marketable title. That process led to the identification of specific title defects. The district court agreed with Feltus that the Niemalas must cure those defects to deliver marketable title. The district court did not change the terms of the settlement agreement; the district court merely enforced the promises made by the Niemalas in the purchase agreement, the addendum to the deed, and the settlement agreement.

C.

The Niemalas argue that the district court's November 2023 order did not give them a reasonable time in which to comply with the order. *See Hopp*, 156 N.W.2d at 216. The district court's November 2023 order specified that the Niemalas had 90 days to deliver marketable title because that was the agreement of the parties. Furthermore, the Niemalas still had not delivered marketable title at the time of the contempt hearing, which was held eight months after the settlement agreement was reached. Thus, the district court's

November 2023 order gave the Niemalas a reasonable amount of time in which to deliver marketable title.

D.

The Niemalas argue that the district court erred by finding them in contempt without finding that they engaged in "bad faith, disrespect, or intentional disobedience." They rely on *Minnesota State Bar Association v. Divorce Assistance Association, Inc.*, 248 N.W.2d 733 (Minn. 1976) (*MSBA*), in which the supreme court stated that a district court may impose a contempt sanction "only where the alleged contemnor has acted contumaciously, in bad faith, and out of disrespect for the judicial process." *Id.* at 740. But the supreme court has stated that the contempt power gives a district court "inherently broad discretion to hold an individual in contempt." *Erickson v. Erickson*, 385 N.W.2d 301, 304 (Minn. 1986). Furthermore, the supreme court has stated that, in a contempt proceeding, "the function of the court is to make the rights of one individual as against another meaningful" and that, "[i]f the duty is one specifically defined by a proper decree of the court, it must be free to compel performance by methods which are speedy, efficient, and sufficiently flexible to meet the problem at hand." *Hopp*, 156 N.W.2d at 216.

The Niemalas contend that they immediately took steps to comply with the November 2023 order and acted in good faith to resolve title issues but encountered various obstacles and delays. In contrast, Feltus contends that the Niemalas did not take timely and appropriate action, such as consulting with a qualified title expert. The evidentiary record on this issue is mixed. The Niemalas took some steps toward delivering marketable title but did not accomplish that goal by the agreed-upon deadline. The district court focused on the Niemalas' failure to consult a title expert before the 90-day deadline. The record shows that, a few weeks after the 90-day deadline, a title company sent the Niemalas a title commitment and stated that "title is clear." The Niemalas' attorney promptly shared that communication with Feltus's attorney. The attorneys proceeded to exchange messages concerning title insurance and a notice of *lis pendens*. On February 22, 2024, Feltus's attorney informed the Niemalas' attorney that the title commitment was inadequate and identified specific title defects and the specific actions necessary to resolve the defects. The record is devoid of evidence that the Niemalas took any of the specified actions before Feltus filed the contempt motion on March 22, 2024, or before the May 2024 hearing on the contempt motion.

In these circumstances, the district court's authority "to make [Feltus's] rights . . . meaningful" by enforcing the parties' settlement agreement and the November 2023 order is broad enough "to compel performance by methods which are speedy, efficient, and sufficiently flexible to meet the problem at hand." *See id.* Given the circumstances, the district court did not abuse its discretion by finding the Niemalas in contempt.

E.

The Niemalas argue that the district court erred on the ground that alternative remedies were available. The Niemalas cite *Sehlstrom*, in which the supreme court held that a writ of execution could have been used to enforce a money judgment arising from a settlement agreement. 925 N.W.2d at 239-40. But the Niemalas' obligation is not a money judgment, so a writ of execution was not and is not available. The Niemalas do not contend that contempt is an unlawful remedy. They contend that Feltus could have commenced a new action alleging a breach of contract and seeking specific performance. But a motion for an order to show cause was expressly contemplated by the parties' settlement agreement. The Niemalas' trial attorney agreed to that procedure on the record during trial, and the district court reiterated the availability of the procedure in its November 2023 order. Thus, the district court did not err on the ground that an alternative remedy would have been more appropriate.

In sum, the district court did not abuse its discretion by finding the Niemalas in contempt. In reaching that conclusion, we are mindful of the consequences of the district court's contempt order. The district court did not penalize the Niemalas for their failure to timely deliver marketable title. The district court merely reiterated that the Niemalas must do what they repeatedly have promised to do so that Feltus may receive marketable title.

Thus, the district court did not err by finding the Niemalas in contempt.

II. Fees and Expenses

The Niemalas also argue that the district court erred by awarding Feltus the attorney fees and expenses she incurred in bringing the contempt motion.

If a party suffers "actual loss or injury" due to another party's contempt, a district court may order the contemnor "to pay the party aggrieved a sum of money sufficient to indemnify the party and satisfy the party's costs and expenses, including a reasonable attorney's fee incurred in the prosecution of such contempt." Minn. Stat. § 588.11 (2024). This statute authorizes an award of attorney fees and related expenses that were "incurred in the prosecution of the contempt." *Hanson v. Thom*, 636 N.W.2d 591, 594 (Minn. App. 2001) (quotation omitted); *see also* D.D. Wozniak & Cynthia L. Lehr, *Dealing with a*

Double-Edged Sword: A Practical Guide to Contempt Law in Minnesota, 18 Wm. Mitchell L. Rev. 7, 17 (1992) (stating that "contemnor may be liable to the party for costs and expenses, including reasonable attorney fees").

The Niemalas first challenge the award on the ground that the contempt order is invalid. *See Sehlstrom*, 925 N.W.2d at 239-40 (reversing award under section 588.11 because contempt finding was reversed). That argument is without merit because we have concluded that the district court did not err by finding the Niemalas in contempt. *See supra* part I.

In the alternative, the Niemalas challenge the award by arguing that Feltus should be responsible for the fees and expenses incurred in investigating and analyzing title issues. The Niemalas contend that, in real-estate transactions generally, "the seller bears the initial burden of demonstrating marketable title, but the buyer is responsible for any further investigation beyond that initial proffer." But Feltus's attorney fees and expenses were incurred in litigation, not for purposes of a real-estate transaction. After the Niemalas failed to meet the 90-day deadline, Feltus's attorney consulted with a title expert, who identified title defects and specified the actions necessary to resolve the defects. In connection with the contempt motion, Feltus obtained and submitted an affidavit of a title expert to prove that the Niemalas had not delivered marketable title. The record reflects that the expert did not execute the affidavit until it was needed for "the prosecution of the contempt." *See Hanson*, 636 N.W.2d at 594. The title expert's fee was $750, which is not excessive.

Thus, the district court did not err by granting Feltus's request for reimbursement of the attorney fees and expenses she incurred in bringing the contempt motion.

III. Motions on Appeal

Before concluding, we must address three motions that are pending in this court.

First, Feltus asks this court to take judicial notice of a probate proceeding concerning the former owner of the property. *See* Minn. R. Evid. 201. "The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01. We sometimes will take judicial notice on appeal. *See, e.g.*, *In re Calm Waters Cannabis Co.*, ____ N.W.3d ____, ____, 2025 WL 1550827, *5 n.8 (Minn. App. June 2, 2025); *Smisek v. Commissioner of Pub. Safety*, 400 N.W.2d 766, 768 (Minn. App. 1987). But in this case, Feltus asks us to take judicial notice of proceedings that occurred after the district court filed its August 2024 contempt order. The probate-court proceedings are irrelevant to the question whether the district court erred in its contempt order. Thus, we deny Feltus's motion for judicial notice.

Second, the Niemalas ask this court to strike Feltus's responsive brief on the ground that she relied, in part, on information that is not in the record. We agree that portions of Feltus's responsive brief refer to information that is not in the record. This court may selectively disregard and strike improper references to facts that are not in the record without striking an entire brief. *AFSCME, Council No. 14 v. County of Scott*, 530 N.W.2d 218, 222-23 (Minn. App. 1995), *rev. denied* (Minn. May 16 & June 14, 1995). Thus, we grant in part and deny in part the Niemalas' motion to strike. Specifically, we strike the following portions of Feltus's responsive brief: (1) the second sentence of the first full paragraph on page 16, (2) the paragraph that wraps from page 16 to page 17, (3) the last clause of the last sentence of the paragraph that wraps from page 17 to page 18, and (4) the first sentence of the second paragraph on page 18.

Third, the Niemalas ask this court for leave to supplement the record in response to Feltus's improper references to facts that are not in the record. Supplementation is unnecessary because we have struck from Feltus's brief all information that is not in the record. Thus, we deny the Niemalas' motion to supplement the record.

Affirmed; motions granted in part and denied in part.