This opinion is nonprecedential except as provided by Minn.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
A24-1748

Larry Walters, et al.,
Appellants,

vs.

Kyle Stromstad, et al.,
Respondents.

Filed July 21, 2025
Affirmed
Cochran, Judge

Polk County District Court
File No. 60-CV-22-231

Michael C. Studer, Serkland Law Firm, LTD., Fargo, North Dakota (for appellants)

Mark A. Grainger, Camrud, Maddock, Olson & Larson, Ltd., Grand Forks, North Dakota (for respondents)

Considered and decided by Reyes, Presiding Judge; Cochran, Judge; and Halbrooks, Judge.*

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant-landowners sued respondent-tenant-farmers for their alleged retention of harvest proceeds in violation of the parties' sharecrop agreement, bringing claims of breach

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

of contract and unjust enrichment. The jury returned a verdict for respondents on appellants' claims of breach of contract and unjust enrichment, and the district court entered judgment consistent with that verdict.

Appellants raise four issues. They first contend that the district court erred by denying their motion for judgment as a matter of law (JMOL) on both their breach-of-contract and unjust-enrichment claims. Second, appellants argue that the district court abused its discretion by denying their motion for a new trial. Third, appellants assert that the district court abused its discretion by denying their motion for a posttrial hearing to assess potential juror misconduct. Fourth, they challenge the district court's denial of their motion to amend their complaint to allege a claim of civil theft. Because none of appellants' arguments warrant relief, we affirm the judgment in favor of respondents.

FACTS[1]

Appellants Larry and Karen Walters own a 574-acre farmstead near Crookston and Beltrami. The farmstead includes a house and six farm fields. The Walterses, who are not farmers, live primarily out-of-state but spend time at the farmstead during the summer and fall. The Walterses have always rented their fields to farmers, typically through sharecrop agreements under which the Walterses shared proceeds of the crops from their fields with the farmers.

[1] These facts are drawn from the evidence presented at trial. Because this appeal concerns the denial of appellants' motions for JMOL and a new trial, these facts are framed in the light most favorable to the respondents as the nonmoving party. *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 618 (Minn. 2022); *Navarre v. S. Washington Cnty. Schs.*, 652 N.W.2d 9, 21 (Minn. 2002).

In 2016, the Walterses entered a sharecrop agreement with respondents Kyle and Bruce Stromstad that ran for a term of five farming seasons, ending October 31, 2021. The agreement provided that the Stromstads were to perform "[a]ll work necessary" to farm the Walterses' land and "deliver" one-third of "the gross proceeds of the yearly farm produce" to the Walterses as rent. Per its terms, the agreement "constitute[d] the entire agreement between the parties" and any modifications of the agreement would "be binding only if in writing signed by each party."

Following the 2021 harvest, the Walterses suspected that they had not received their full one-third share of the crops harvested from their fields. When the Stromstads denied withholding any of the crops, the Walterses filed a lawsuit in early 2022 asserting claims for breach of contract and unjust enrichment against the Stromstads.[2] Before trial, the district court denied the Walterses' motion for leave to amend their complaint to bring a claim of civil theft and seek punitive damages. The case proceeded to a jury trial.

The evidence at trial established the parties' practices during the five-year period under the sharecrop agreement. Kyle[3] oversaw the farming operation and directed a crew on the Walterses' fields during the harvests. Kyle's crew delivered harvested crops to grain elevators, where the crops were credited to accounts belonging to the Stromstads and the Walterses. Once crops were credited to their accounts, the parties could sell them at any

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[2] The Stromstads also brought claims for conversion and fraud, but those claims were voluntarily dismissed during the litigation and are not relevant on appeal.

[3] Because multiple parties share the same last name, we use first names throughout this opinion when referring to parties individually.

time. It was through this process that the Stromstads satisfied their rent obligation under the sharecrop agreement. During the five-year period of the parties' sharecrop agreement, the Stromstads never transferred harvested crops directly to the Walterses, nor did the Stromstads pay the Walterses directly with cash.

Prior to 2021, the Stromstads typically delivered crops from the Walterses' fields to the West Central elevator in Beltrami. But, leading up to the 2021 harvest, Kyle told Larry that "he was going to be doing work with CHS," a different grain elevator located in Crookston. Before harvesting the Walterses' fields in 2021, Kyle told Larry three times to open an account with CHS. Larry never opened an account with CHS, and no one else could do so on his behalf.

At harvest time in 2021, the Stromstads proceeded under the assumption that Larry had opened an account with CHS. Kyle instructed his crew to deliver the corn[4] from the Walterses' fields to whichever grain elevator had a shorter line. Kyle called CHS and West Central ahead of time and instructed both elevators to credit the Walterses with one-third of the corn his crew was delivering. The Walterses received credit for over 7,000 bushels of corn that were delivered to West Central. But, because Larry never opened an account with CHS, all corn delivered to CHS was credited in full to the Stromstads.

Following the parties' presentation of the evidence and closing arguments, the Walterses moved for JMOL on their claim for breach of contract. The district court denied the motion, determining that there was "favorable" testimony and evidence for both sides.

[4] Kyle elected to exclusively grow corn on the Walterses' fields in 2021.

The jury returned a verdict for the Stromstads on both claims. On the breach-of-contract claim, the jury found that the parties entered a valid contract but decided that the Stromstads did not breach the contract. And, regarding the unjust-enrichment claim, the jury found that the Walterses did not provide a benefit to the Stromstads. The district court entered judgment consistent with the jury's findings.

The Walterses filed a posttrial motion requesting several forms of relief. First, they moved for JMOL on both of their claims. In the alternative, the Walterses moved for a new trial, asserting that the evidence could not sustain the jury's verdict on both claims and that the Stromstads and their counsel committed misconduct by exposing the jury to prejudicial evidence of the parties' settlement negotiations. In addition, the Walterses asked the district court to hold a hearing to determine whether juror misconduct had occurred. Lastly, the Walterses sought review of the earlier denial of their motion to amend their complaint to bring a claim for civil theft. The district court denied all requested relief in the Walterses' motion.

This appeal follows.

DECISION

The Walterses argue that the district court erred in denying their motion for JMOL and likewise erred in denying their motion for a new trial. They also argue that the district court abused its discretion by denying their motion for a hearing to assess potential juror misconduct. Finally, they challenge the district court's denial of their motion for leave to amend their complaint to bring a claim of civil theft. We address each argument in turn and discern no basis for reversal.

I. The district court did not err by denying the Walterses' motion for JMOL.

The Walterses first challenge the district court's denial of their motion for JMOL on their claims of breach of contract and unjust enrichment. Under the rules of civil procedure, a district court may grant JMOL against a party when that "party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Minn. R. Civ. P. 50.01(a). Put differently, JMOL is appropriate "only when the evidence is so overwhelming on one side that reasonable minds cannot differ as to the proper outcome." *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 55 (Minn. 2019) (quotation omitted).

We review the denial of a motion for JMOL de novo, viewing the evidence in the light most favorable to the nonmoving party. *Vermillion State Bank*, 969 N.W.2d at 618. We do not weigh the evidence or evaluate the credibility of the witnesses. *Kedrowski*, 933 N.W.2d at 55. Instead, "we make an independent determination of the sufficiency of the evidence." *Id.* at 54-55 (quotations omitted). And, if there is "sufficient evidence to present an issue of fact for the jury," we will affirm the denial of a motion for JMOL. *Jerry's Enters., Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 816 (Minn. 2006).

The Walterses assert that the district court erred when it denied their motion for JMOL because the evidence at trial overwhelmingly established that the Stromstads breached the sharecrop agreement or, in the alternative, were unjustly enriched by their retention of proceeds from corn delivered to CHS. We address each claim separately.

Breach of Contract

The Walterses' breach-of-contract claim was based on the allegation that the Stromstads failed to pay them their full one-third share of the season's harvest as required by the sharecrop agreement. The Walterses assert that, based on the trial evidence, no reasonable juror could find for the Stromstads on this claim. The Stromstads respond that they fully performed under the sharecrop agreement, as modified by the parties, and that it was Larry Walters who breached the contract.

To establish their claim for breach of contract, the Walterses had to prove "(1) formation of a contract, (2) performance by plaintiff[s] of any conditions precedent to [their] right to demand performance by the defendant[s], and (3) breach of the contract by defendant[s]." *Lyon Fin. Servs., Inc. v. Ill. Paper and Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014) (quotation omitted). The parties do not dispute that the sharecrop agreement was a valid contract. The only element in dispute is whether the Stromstads breached the sharecrop agreement. "A breach of contract is a failure, without legal excuse, to perform any promise that forms the whole or part of the contract." *Id.*

The sharecrop agreement obligated the Stromstads to pay the Walterses rent consisting of one-third "of the gross proceeds of the yearly farm produce." At trial, Kyle conceded that some corn from the Walterses' property went to CHS, none of which was credited to the Walterses. The Walterses contend that Kyle's testimony establishes a breach of the sharecrop agreement as a matter of law.

The district court disagreed, determining that the parties orally modified the sharecrop agreement:

> [T]he evidence demonstrates the agreement of the parties was NOT for the Stromstads to actually deliver to the Walterses their 33-1/3 percent of the gross proceeds of the yearly farm produce of corn as set forth in the written agreement, but instead to deliver the corn to a grain elevator where the Walterses could then decide what they wanted to do with it.

According to the district court, the Stromstads fulfilled their rent obligation under the orally modified sharecrop agreement by delivering the corn from the Walterses' fields to grain elevators. The district court further determined that Larry's failure to open an account with CHS excused "performance of the contract by the Stromstads with regard to the corn which was not credited to the Walterses."

The Walterses first argue that the district court improperly considered the parties' course of performance under the agreement to modify its unambiguous terms. We agree with the Walterses that the parties' agreement unambiguously requires the Stromstads to "deliver to" the Walterses one-third "of the gross proceeds of the yearly farm produce." And, typically, when a contract is unambiguous "we enforce the agreement of the parties as expressed in the language of the contract." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). "However, a written contract may be modified after its execution by the acts and conduct of the parties." *Alexander v. Holmberg*, 410 N.W.2d 900, 901 (Minn. 1987) (quotation omitted). And parol evidence[5] is admissible "to explain the parties' conduct subsequent to the written agreement." *Id.* "Parol evidence that modifies

[5] Parol evidence is "evidence of oral statements." *Black's Law Dictionary* 699 (12th ed. 2024).

the terms of a written agreement must be clear and convincing." *Thoe v. Rasmussen*, 322 N.W.2d 775, 777 (Minn. 1982).

Consequently, the question before us in reviewing the district court's denial of JMOL is whether there is a legally sufficient evidentiary basis for a reasonable jury to find that the parties modified the sharecrop agreement through their subsequent conduct and, if so, whether a reasonable jury could find that there was no breach of the modified agreement. *See Kedrowski*, 933 N.W.2d at 54-55 (explaining JMOL standard). We conclude that there was legally sufficient evidence to support the denial of JMOL.

When viewed in the light most favorable to the Stromstads, the trial evidence was clear and convincing that the parties modified their contract by their subsequent conduct and the modified contract was not breached by the Stromstads. The trial evidence shows that the Stromstads "provided" crop proceeds to the Walterses by delivering crops to elevators, rather than directly to the Walterses. Larry conceded at trial that he accepted rent payments in this manner for the duration of the sharecrop agreement. The evidence also establishes that Kyle told Larry that he would be delivering corn to the CHS elevator in 2021, and Kyle instructed Larry three times to open an account with CHS so that the Walterses could receive credit for their share of corn. Lastly, the evidence shows that Larry did not open an account with CHS, while Kyle proceeded with the harvest assuming that Larry *had* opened an account. And Kyle instructed the CHS elevator to credit the Walterses for one-third of the corn delivered to CHS. Based on these facts, there was sufficient evidence for a reasonable jury to conclude that the parties modified the sharecrop agreement through their conduct and that the Stromstads did not breach the agreement as modified. The evidence does not "overwhelming[ly]" favor the Walterses, and therefore the district court did not err by denying the Walterses JMOL on their breach-of-contract claim. *See Kedrowski*, 933 N.W.2d at 55 (quotation omitted).

The Walterses also assert that the sharecrop agreement, which is essentially a five-year lease for the Walterses' land, could be modified only in writing because it is governed by the statute of frauds. The Walterses' reliance on the statute of frauds is misguided.

"The purpose of the statute of frauds is to defend against frauds and perjuries by denying force to oral contracts of certain types which are peculiarly adaptable to those purposes." *Smith v. Woodwind Homes, Inc.*, 605 N.W.2d 418, 423 (Minn. App. 2000) (quotation omitted). "But the distinction must be kept in mind between the contract itself, which is within the purview of the statute, and the subsequent performance, which is not." *Scheerschmidt v. Smith*, 77 N.W. 34, 35 (Minn. 1898). Thus, "an oral agreement that modifies the method or time for performance is valid and not subject to the statute of frauds." *Thoe*, 322 N.W.2d at 777. Indeed, "[t]he general common law rule is that a written contract can be varied or rescinded by oral agreement of the parties, even if the contract provides that it shall not be orally varied or rescinded." *Larson v. Hill's Heating & Refrigeration of Bemidji, Inc.*, 400 N.W.2d 777, 781 (Minn. App. 1987), *rev. denied* (Minn. Apr. 17, 1987). In sum, Minnesota caselaw makes clear that a written contract, even if within the statute of frauds, may be modified by oral agreement and course of conduct. *See Alexander*, 410 N.W.2d at 901; *Larson*, 400 N.W.2d at 781.

Unjust Enrichment

The Walterses also contend that the district court erred by denying them JMOL on their claim of unjust enrichment. "Unjust enrichment is an equitable doctrine that allows a plaintiff to recover a benefit conferred upon a defendant when retention of the benefit is not legally justifiable." *Herlache v. Rucks*, 990 N.W.2d 443, 450 (Minn. 2023) (quotation omitted). Equitable relief, including relief based on unjust enrichment, "cannot be granted where the rights of the parties are governed by a valid contract." *U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981).

It is undisputed that the parties' rights are governed by the sharecrop agreement, which includes provisions directly applicable to the Walterses' entitlement to the corn at issue. As discussed above, there is a legally sufficient evidentiary basis for a reasonable jury to conclude that the parties modified the sharecrop agreement and that the Stromstads did not breach the modified agreement. And the jury in this case actually found that the sharecrop agreement was a valid contract between the parties. Because the sharecrop agreement is a valid contract that governs the dispute at issue, the Walterses cannot recover under the equitable theory of unjust enrichment. *See id.* The district court therefore did not err by denying the Walterses' motion for JMOL on either their unjust-enrichment claim or their breach-of-contract claim.

II. The district court did not abuse its discretion by denying the Walterses' motion for a new trial.

The Walterses next challenge the district court's denial of their motion for a new trial. We review a district court's denial of a motion for a new trial for an abuse of discretion. *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted). The Walterses moved for a new trial based on (1) alleged misconduct at trial by the Stromstads and their attorney and (2) insufficient evidence. On appeal, they argue the district court abused its discretion when it concluded that neither basis warranted a new trial. We address each basis in turn.

Misconduct

A new trial may be warranted when the prevailing party committed misconduct. Minn. R. Civ. P. 59.01(b). The decision to grant a new trial for party misconduct "rests almost wholly in the discretion of the [district] court and its [decision] will not be reversed on appeal except for a clear abuse of discretion." *Wild v. Rarig*, 234 N.W.2d 775, 785 (Minn. 1975). We will reverse the denial of a new trial only if the misconduct was "so prejudicial that it would be unjust to allow the result to stand." *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 419 (Minn. App. 2010) (quotation omitted). And when attorney misconduct is involved, the justification for granting a new trial is not "to punish . . . professional lapses but to obviate prejudice." *Eklund v. Lund*, 222 N.W.2d 348, 362 (Minn. 1974).

The Walterses assert that the Stromstads and their attorney committed misconduct by eliciting testimony relating to the parties' settlement negotiations, in violation of the district court's pretrial ruling pursuant to Minnesota Rule of Evidence 408. Under rule 408, evidence of a party's offer, or a party's acceptance of an offer, to settle a claim "is not admissible to prove liability for or invalidity of the claim or its amount." The purpose of the rule is to "promote[] settlement by relieving parties of the fear that statements made in furtherance of settlement could later be used against them." *In re Buckmaster*, 755 N.W.2d 570, 579 (Minn. App. 2008). While any reference to the parties' attempts at settling is generally improper, such a reference will not always be prejudicial. *See Bregier v. Nat'l Fam. Ins. Co.*, 411 N.W.2d 892, 895 (Minn. App. 1987) (holding that an objected-to reference to personal-injury settlement during closing argument was not prejudicial); *James v. Chicago, St. P. M. & O. Ry. Co.*, 16 N.W.2d 188, 192 (Minn. 1944) (same).

The Walterses allege they were denied a fair trial because the Stromstads and their attorney "referenced settlement eight times in presence of the jury." As an initial matter, the Walterses concede that the district court sustained their objection to most of these purported attempts to reference settlement negotiations. For instance, the Stromstads' attorney asked Kyle about whether "attempts were made to resolve [the] conflict" before the Walterses sued. The Walterses' attorney objected, and the district court sustained the objection. Next, after Kyle testified that he realized only at trial that Larry had not been credited for corn brought to CHS, defense counsel asked Kyle whether he had "an opportunity to remedy that" or "correct that error." The Walterses' attorney objected, and the district court again sustained the objection. The district court also instructed the jury, in the final jury instructions and at the time it sustained some of the objections, that it should "ignore" any answer or question to which an objection was sustained. We presume that the jury follows the district court's instructions. *Frazier v. Burlington N. Santa Fe*

Corp., 811 N.W.2d 618, 630 (Minn. 2012). Thus, the risk of prejudice to the Walterses from any of these references was diminished.

The Walterses point us to only two instances when the district court overruled their objections, and those instances do not necessarily involve attempts to inject inadmissible settlement evidence into trial. The district court first overruled one of the Walterses' objections during Kyle's cross-examination. Kyle testified that it was only during trial that he realized that Larry failed to open an account with CHS. Then, the following colloquy occurred:

> Q: Three years later you learned that for the first time, correct?
> A: That's right, because I was never given an opportunity because you were suing us already.

The Walterses' attorney objected and moved to strike Kyle's testimony, but the district court overruled the objection. Apart from summarily citing the page of the transcript containing this colloquy, the Walterses do not explain how Kyle's testimony exposed the jury to prejudicial settlement evidence. Kyle's testimony that he had no "opportunity" to learn that Larry failed to open a CHS account is not evidence of the parties' settlement negotiations.

The district court also overruled the Walterses' objection when the Stromstads' attorney asked a grain-elevator accountant if she was "involved in any talks about" crediting corn to the Walterses' account that had been mistakenly credited to the Stromstads. Again, it is unclear to us that this question was meant to elicit evidence of settlement negotiations. Instead, this question may have been directed at various elements of the Walterses' breach-of-contract and unjust-enrichment claims: i.e., whether the

Walterses mitigated their breach-of-contract damages or whether the Stromstads unjustly retained any corn. Regardless, the witness answered in the negative. Thus, even if we assume that the question was an impermissible attempt to elicit evidence of settlement negotiations, the jury heard no prejudicial evidence of any settlement negotiations from this witness.

We also note that the issue of potential prejudice from questioning related to settlement efforts was argued to the district court during the trial. At trial and outside of the presence of the jury, the Walterses expressed their concern about the Stromstads' "continued efforts to elicit settlement offers and settlement negotiations." The Walterses' attorney suggested that he "may" move for a mistrial if the attempts continued. The Stromstads' attorney responded that the questions at issue were directed not at settlement negotiations but instead were directed at admissible evidence relating to the Walterses' alleged failure to mitigate any damages stemming from the Stromstads' alleged breach of contract. The district court considered the parties' arguments and clarified that the Stromstads could elicit testimony about Larry's failure to open an account with CHS but would not be permitted to ask questions about the "options [they] offered" to the Walterses or whether the Walterses denied those offers. Later, in its order addressing the Stromstads' posttrial motions, the district court concluded that the Stromstads had not established that the Walterses' questioning prejudiced the jury. "The [district] court judge . . . is present during the trial and is best positioned to determine whether or not an attorney's misconduct has prejudiced the jury." *Johnson v. Washington County*, 518 N.W.2d 594, 601 (Minn. 1994).

In sum, the record reflects that the district court granted the Walterses' timely objections to most of the questions that form the basis for their challenge on appeal and the district court instructed the jury to disregard any question and answer for which it sustained an objection. The record also reflects that the district court carefully considered the Walterses' argument about the nature of the questioning, was on notice of any potential misconduct, and ultimately determined that the jury was not exposed to prejudicial settlement evidence. Consequently, because the record fails to demonstrate any prejudice from the purported settlement references—the ultimate consideration for purposes of granting a new trial, the district court did not abuse its discretion by denying the Walterses a new trial for party misconduct. *See McKinnon*, 784 N.W.2d at 419.

Insufficient Evidence

A district court may also grant a new trial when the jury's verdict "is not justified by the evidence, or is contrary to law." Minn. R. Civ. P. 59.01(g). We "will not set aside a jury verdict on an appeal from a district court's denial of a motion for a new trial unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict." *Navarre*, 652 N.W.2d at 21 (quotations omitted).

The Walterses argue that the jury's verdict was contrary to the evidence developed at trial. For the same reasons discussed in Section I of this opinion, we conclude that the jury's verdict was not "manifestly and palpably contrary to the evidence." *See id.* The district court therefore did not abuse its discretion by denying the Walterses' motion for a new trial on this basis either.

III. The district court did not abuse its discretion by denying a hearing on the Walterses' allegations of juror misconduct.

The Walterses next argue that the district court abused its discretion by denying their posttrial motion for a hearing to assess alleged juror misconduct. When, after a jury trial, the losing party suspects the possibility of juror misconduct, the losing party should bring the potential misconduct to the district court's attention by moving for a *Schwartz* hearing. *Zimmerman v. Witte Transp. Co.*, 259 N.W.2d 260, 262 (Minn. 1977); *see also Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 301, 303 (Minn. 1960). If the facts alleged by the losing party "appear to warrant action," the district court may hold a *Schwartz* hearing with counsel present to examine any jurors involved in the alleged misconduct. *See Zimmerman*, 259 N.W.2d at 263. Although a district court "should be liberal in granting such a hearing," whether to grant the hearing ultimately lies within the discretion of the district court. *Id.* at 262-63.

A district court may grant a *Schwartz* hearing solely on "oral assertion by counsel or hearsay affidavit." *Id.* at 263. "To establish a prima facie case for a *Schwartz* hearing, the movant must submit sufficient evidence which, standing alone and unchallenged, would warrant the conclusion of jury misconduct." *Johnson v. Ramsey County*, 424 N.W.2d 800, 805 (Minn. App. 1988) (quotation omitted), *rev. denied* (Minn. Aug. 24, 1988). But, even if the moving party establishes a prima facie case of juror misconduct, the district court need not "blindly accept" the moving party's assertions; it can also consider evidence from the nonmoving party rebutting the moving party's allegations of jury misconduct. *State v. Larson*, 281 N.W.2d 481, 484 (Minn. 1979)

In support of their motion for a *Schwartz* hearing, the Walterses' attorney filed an affidavit stating that, two days after trial, he discovered a suspicious connection between Kyle and the jury foreperson. According to the affidavit and accompanying screenshots, the foreperson's Facebook profile showed that Kyle was a "Recently Added" friend on the foreperson's Facebook page. In their motion, the Walterses contended that the foreperson "did not disclose any connection to the [Stromstads] during voir dire" and that the Facebook connection, "on its face, gives the appearance of impropriety."

In response, the Stromstads filed an affidavit in which Kyle stated that he did not know the foreperson before trial and never communicated with the foreperson before trial. Kyle asserted that he moderated a public Facebook group dedicated to the "Versatile" brand of tractors, which had over 14,000 members, and noted that he managed the membership of the Facebook group. Kyle further stated that, after trial, "[i]t was through the classic Versatile Tractors Facebook group that [he] received a friend request from [the foreperson]." And he added that he thought the foreperson sent him a friend request "due to [their] common interest in classic Versatile Tractors."

The district court declined to hold a *Schwartz* hearing. The district court pointed to evidence introduced at trial showing that Kyle had an affiliation with the Versatile brand. The district court also noted that, after trial, it instructed the jurors that they could "go on social media such as Facebook and talk about the trial." Lastly, the district court credited the assertions in Kyle's affidavit.

The Walterses argue that the district court abused its discretion by considering Kyle's affidavit and failing to consider their evidence of misconduct "standing alone and unchallenged." We are not persuaded.

To warrant a *Schwartz* hearing, it is necessary, *but not sufficient*, for the moving party to present "evidence which, standing alone and unchallenged, would warrant the conclusion of jury misconduct." *See id.* Such evidence is not sufficient to warrant a *Schwartz* hearing because the district court has discretion over whether to grant a *Schwartz* hearing and may consider the nonmoving party's evidence rebutting an inference of juror misconduct in making its decision. *Id.* We conclude that the district court adequately considered the evidence submitted by both parties and did not abuse its discretion by determining that a *Schwartz* hearing was unnecessary.

IV. The district court properly denied the Walterses' motions for leave to amend their complaint.

Lastly, the Walterses contend that the district court twice improperly denied their motion to amend the complaint. "Generally, the decision to permit or deny amendments to pleadings is within the discretion of the district court and will not be reversed absent a clear abuse of discretion." *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003). The Walterses moved to amend their complaint to bring a claim of civil theft both before and after trial. We address each motion separately.

Pretrial Motion

When the Walterses moved to amend their complaint before trial, the Stromstads had already answered the complaint. Upon service of the answer, the plaintiff may amend the complaint "only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Minn. R. Civ. P. 15.01.

In their proposed amended complaint, the Walterses alleged a claim of civil theft on the basis that "[a]fter the corn on the Walterses Property came into existence, [the Stromstads] wrongfully and surreptitiously took, without claim of right, the [Walterses'] share." The district court denied the Walterses' motion, determining that the amendment would be futile because the Walterses could not "demonstrate a colorable claim for civil theft." The Walterses assert that the district court should have applied a more liberal standard rather than assessing their "claim's plausibility." We disagree.

A district court need not permit an amendment that "would be futile because it would serve no useful purpose." *U.S. Bank Nat'l Ass'n v. RBP Realty, LLC*, 888 N.W.2d 699, 705 (Minn. App. 2016), *rev. denied* (Apr. 18, 2017). And "[a] motion to amend a complaint is properly denied when the additional claim could not survive summary judgment." *Bebo v. Delander*, 632 N.W.2d 732, 740 (Minn. App. 2001) (citing *M.H. v. Caritas Fam. Servs.*, 488 N.W.2d 282, 290 (Minn. 1992)), *rev. denied* (Minn. Oct. 16, 2001). When a district court denies a motion to amend on futility grounds, "our review of the district court's ruling may turn on whether it was correct in an underlying legal ruling." *U.S. Bank*, 888 N.W.2d at 705 (quotation omitted).

The district court determined that the conduct alleged by the Walterses in their proposed amended complaint was "inconsistent with the behavior being proscribed in the [civil-theft] statute." In Minnesota, civil theft is a statutory claim. *See* Minn. Stat. § 604.14 (2024). Under section 604.14, "[a] person who steals personal property from another is civilly liable to the owner of the property for its value when stolen plus punitive damages." *Id.*, subd. 1. We have noted that the key word in section 604.14 is "steals," which is not defined within chapter 604. *TCI Bus. Cap., Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 430 (Minn. App. 2017). Based on common usage, we have interpreted "steals" to mean "that a person wrongfully and surreptitiously takes another person's property for the purpose of keeping it or using it." *Id.* at 431. "[F]or a person to steal something, there must be some initial wrongful act in taking possession of the property." *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115, 126 (Minn. App. 2017), *aff'd*, 913 N.W.2d 687 (Minn. 2018).

We discern no abuse of discretion by the district court in its decision to deny the pretrial amendment. The district court properly determined that the Walterses' amendment would be futile because the Walterses did not allege an "initial wrongful act" by which the Stromstads "surreptitiously" took the corn. *See TCI*, 890 N.W.2d at 430; *Staffing Specifix*, 896 N.W.2d at 126. The Walterses' proposed amended complaint alleged that the Stromstads paid rent under the sharecrop agreement by "harvest[ing] and deliver[ing] the crops from the [Walterses' fields] to local grain elevators, and the grain elevator would allocate the crop to the parties." By the Walterses' own admission, then, the Stromstads were expected to harvest all of the corn, take possession of it, and then deliver it to grain elevators. And, while they do allege that the Stromstads "intentionally misreported" the harvest in end-of-season insurance documents, it is unclear how this allegation, if true, amounts to civil theft from the Walterses. In sum, the proposed amended complaint does not specify any act by which the Stromstads "wrongfully and surreptitiously" took the

Walterses' share of the corn and therefore fails to allege facts sufficient to survive summary judgment on a claim for civil theft. *See TCI*, 890 N.W.2d at 430. Thus, the district court did not abuse its discretion by denying the Walterses' pretrial motion to amend their complaint.

Posttrial Motion

The Walterses also contend that they should have been permitted to amend their complaint after the trial to state a claim for civil theft in conformity with the evidence. Minnesota Rule of Civil Procedure 15.02 provides that "[w]hen issues not raised by the pleadings are tried by *express or implied consent of the parties*, they shall be treated in all respects as if they had been raised in the pleadings." (Emphasis added.) Under these circumstances, the plaintiff may amend their complaint, "even after judgment," to conform to the evidence. Minn. R. Civ. P. 15.02.

In denying the Walterses' motion, the district court found that the Stromstads neither expressly nor implicitly consented to trying the issue of civil theft. The district court noted that the Stromstads "opposed the pretrial effort of the Walterses to amend their complaint to add a claim of civil theft." And it concluded that none of the facts or evidence identified by the Walterses supported a determination that the Stromstads implicitly consented.

The Walterses do not dispute the district court's finding that the Stromstads did not expressly or implicitly consent to trying a civil-theft claim. Instead, the Walterses merely assert that evidence at trial, namely Kyle's testimony about retaining proceeds of corn delivered to CHS, supports a claim for civil theft. But when evidence admitted at trial is relevant to an issue already stated in the pleadings, the district court may properly determine that no new issue was litigated by consent on that evidence. *Schumann v. McGinn*, 240 N.W.2d 525, 538 (Minn. 1976). As shown by their other arguments on appeal, Kyle's admission to retaining the CHS corn proceeds was crucial to the Walterses' breach-of-contract and unjust-enrichment claims. Because the evidence that is purportedly relevant to a civil-theft claim was also relevant to the Walterses' other pleaded and tried claims, the district court properly determined that the Stromstads did not implicitly consent to trying a claim for civil theft. *See Hofer v. Hofer*, 386 N.W.2d 391, 393 (Minn. App. 1986) ("Implied consent to litigate an issue must be clearly indicated." (quotation omitted)).

In short, the Walterses do not point us to any clear indication of the Stromstads' implicit consent to try a civil-theft claim. *See id.* Because the Stromstads did not consent, the district court did not abuse its discretion by denying the Walterses' motion to amend their complaint to conform with the evidence. *See* Minn. R. Civ. P. 15.02.

Affirmed.