This opinion is nonprecedential except as provided by Minn.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
A24-1814

Capital Construction, LLC,
Respondent,

vs.

Nicholas Hanzlik, et al.,
Appellants.

Filed July 21, 2025
Affirmed
Ede, Judge

Anoka County District Court
File No. 02-CV-21-674

Mary L. Hahn, Moersch, Dorsey & Hahn, P.A., Northfield, Minnesota (for respondent)

Jason T. Dzurik, Dzurik, LLC, St. Paul, Minnesota (for appellants)

Considered and decided by Smith, Tracy M., Presiding Judge; Frisch, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this appeal from a judgment for respondent contractor on a breach-of-contract claim, appellant homeowners challenge (A) the district court's decision to award respondent damages for overhead and profit and (B) the findings of fact underlying the damages award. We affirm.

FACTS

This is the second time this case has come before us on appeal. *See Cap. Constr., LLC v. Hanzlik*, No. A23-1404, 2024 WL 2268233 (Minn. App. May 20, 2024). The following factual summary is drawn from the underlying proceedings and the district court's findings of fact based on the trial evidence.

In June 2017, the home of appellants Nicholas and Alyssa Hanzlik suffered storm damage. In April 2018, the Hanzliks hired respondent Capital Construction LLC to complete the repair and replacement work specified by the estimate of Hanzliks' insurance company. Capital Construction helped the Hanzliks negotiate their insurance claim, resulting in an appraisal award of $31,709.37 for window repairs. After obtaining the appraisal award from their insurance company and before Capital Construction began making the window repairs, the Hanzliks canceled the parties' contract.

The contract between the Hanzliks and Capital Construction contained a liquidated-damages clause. In February 2021, Capital Construction sued the Hanzliks, seeking: judgment based on breach of contract or declaratory judgment for $7,927.34, representing an award of liquidated damages; attorney fees and costs; an award of prejudgment and postjudgment interest; and other such relief as the district court might deem necessary. In September 2021, Capital Construction filed an amended complaint in which it asserted a second cause of action—in the alternative to its claim for liquidated damages—seeking actual damages proximately caused by the Hanzliks' breach of contract. Capital Construction claimed that, as a proximate result of the Hanzliks' breach, it had incurred the sum of $15,000, representing lost hours worked plus 15% of the overall window project as profit ($4,756), for a total of $19,756.

The matter proceeded to a court trial in April 2023, during which Capital Construction sought to enforce the liquidated-damages clause of the contract. Along with presenting documentary evidence of the parties' contract and the $31,709.37 appraisal award, Capital Construction introduced testimony from E.B., who served as project manager.

E.B. testified that, in its initial appraisal of the damage to the Hanzliks' home, the insurance company did not approve an adequate award for the window repairs and that, through his efforts and those of other employees, Capital Construction had obtained a substantially greater appraisal award. He explained that, while the initial offer from the Hanzliks' insurance company was $1,600, the appraisal award that Capital Construction had achieved was $31,709.37. E.B. stated that the standard rate for the Capital Construction's services is $100 per hour and that negotiating the Hanzliks' insurance claim required driving, gas, money spent on reports, emails, meeting at showrooms, and meeting at the Hanzliks' home. And E.B. estimated that Capital Construction had performed roughly 150 hours of work when the Hanzliks canceled the contract and that Capital Construction would have expected to earn around $5,000 profit from the project.

The district court determined that Capital Construction had succeeded on its breach-of-contract claim and that the liquidated-damages clause was enforceable. And the district court entered judgment against the Hanzliks in the amount of $7,827.34 in liquidated damages and $13,119.25 in attorney fees and costs. No posttrial motions were filed. The Hanzliks appealed from the judgment.

On appeal, the Hanzliks argued that the district court erred by improperly placing the burden on them to introduce affirmative evidence demonstrating that the liquidated-damages clause was unenforceable. We agreed, concluding that the district court had improperly placed that burden on the Hanzliks and had not made any findings that Capital Construction had presented sufficient evidence that the liquidated-damages clause was enforceable under Minnesota law. Thus, we reversed the judgment and remanded the matter for the district court to apply the correct standard.

Following remand, the district court filed findings of fact, conclusions of law, and an order in October 2024. Applying *Gorco Constr. Co. v. Stein*, 99 N.W.2d 69, 75 (Minn. 1959), the district court determined that the liquidated-damages clause was not enforceable because Capital Construction had "not met its burden of persuasion . . . that their actual damages were 'incapable or very difficult of accurate estimation.'" Even so, the district court reasoned that our decision in the first appeal had not disturbed the district court's determination that the Hanzliks had breached the contract. And the district court noted that, because it had "previously determined that the liquidated damages clause was enforceable, [it had] not reach[ed] [Capital Construction's] alternative cause of action, which sought actual damages proximately caused by the breach."

Based on the documentary evidence that the district court had received at trial—i.e., "the parties' contract and appraisal award"—the court determined that Capital Construction had proved that it had "suffered damages in the amount specified by the contract, namely for 10% each on profit and overhead, above the loss [of] replacement cost listed in the appraisal award, as provided by the contract." A provision on the first page of the parties' two-page contract states:

> Owner acknowledges that no estimate will be provided and that aside from the deductible, the cost of re-decking and any upgrades or additional work requested by Owner, the summary of the work to be performed, the description of materials to be used or a list of standard features included, the total contract price of description of the basis on which the price will be calculated, is embodied in the insurance loss data information provided by Owner's insurer, including, all supplemental amounts and 10% overhead and 10% profit approved by Owner's insurer, and that this amount will constitute the price of the work.

The district court therefore awarded Capital Construction "$6,341.87 in actual damages as determined by the contract," $13,119.25 in attorney fees and costs, and $200 in statutory costs. And the district court ordered that judgment be entered against the Hanzliks jointly and severally.

This appeal follows.

DECISION

The Hanzliks challenge (A) the district court's decision to award Capital Construction damages for overhead and profit and (B) the findings of fact underlying the damages award.

"A determination of damages usually should be left to the judgment of the [district] court." *Vault, Inc. v. Michael-Nw. P'ship*, 372 N.W.2d 7, 9 (Minn. App. 1985) (quotation omitted), *rev. denied* (Minn. Sept. 13, 1985). "While the district court's decision to award or not award damages is reviewed for an abuse of discretion, the factual finding underlying the amount and extent of damages is a question of fact." *In re Minnwest Bank Litig. Concerning Real Property*, 873 N.W.2d 135, 143 (Minn. App. 2015) (citation and quotation omitted).

"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). In an appeal from a court trial, we do not reconcile conflicting evidence and do not set aside the district court's factual findings unless they are clearly erroneous. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *rev. denied* (Minn. June 26, 2002); *see also* Minn. R. Civ. P. 52.01 ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses."). Findings of fact are clearly erroneous "when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted).

Below, we address each of the Hanzliks' arguments in turn.

A. The district court did not err in awarding damages for overhead and profit.

The Hanzliks assert that Capital Construction "failed to prove the existence of lost profits to a reasonable certainty and the amount of those damages to a reasonable probability," and they maintain that the overhead and profit clause in the parties' contract "is a penalty clause that's not enforceable." Capital Construction counters that the district court did not abuse its discretion in "limit[ing] damages to just the overhead and profit percentages set forth in the contract." We agree with Capital Construction.

"Under a general allegation of damages resulting from a breach of contract, a plaintiff may recover those damages that naturally and necessarily result from the alleged breach." *Logan v. Norwest Bank Minn., N.A.*, 603 N.W.2d 659, 663 (Minn. App. 1999). As the Hanzliks point out, "non-breaching parties should recover damages sustained by reason of the breach [that] arose naturally from the breach or could reasonably be supposed to have been contemplated by the parties when making the contract as the probable result of the breach." *Lesmeister v. Dilly*, 330 N.W.2d 95, 103 (Minn. 1983); *see also Franklin Mfg. Co. v. Union Pac. R. Co.*, 248 N.W.2d 324, 325 (Minn. 1976) (explaining that "damages must either have been within the contemplation of the [breaching party] at the time it entered into the contract or be so likely to result from the breach that they can reasonably be said to have been foreseen").

"The term actual damages means an amount awarded to a complainant to compensate for a proven injury or loss; damages that repay actual losses." *Poppler v. Wright Hennepin Co-Op Elec. Ass'n*, 834 N.W.2d 527, 546 (Minn. App. 2013) (quotations omitted), *aff'd*, 845 N.W.2d 168 (Minn. 2014). Expectation damages "attempt to place the plaintiff in the same position as if the breaching party had complied with the contract." *Logan*, 603 N.W.2d at 663. So long as the plaintiff can show that the defendant breached the contract, the plaintiff "would be entitled to be placed in the position" they would have been had the defendant performed. *Id.*

"Damages in a business context generally are in the form of lost profits." *Poppler*, 834 N.W.2d at 546. "A plaintiff has the burden of proving the existence of lost profits 'to a reasonable certainty' and the amount of those damages 'to a reasonable probability.'" *Id.* (quoting *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 920 (Minn. 1990)). And "[t]he burden is on the plaintiff to 'establish a reasonable basis for approximating a loss.'" *Galaxy Wireless, LLC v. W. Nat'l Mut. Ins.*, 8 N.W.3d 698, 705 (Minn. App. 2024) (quoting *DeRosier v. Util. Sys. of Am., Inc.*, 780 N.W.2d 1, 5 (Minn. App. 2010)). "Damages cannot be 'speculative, remote, or conjectural.'" *DeRosier*, 780 N.W.2d at 5 (quoting *Leoni v. Bemis Co.*, 255 N.W.2d 824, 826 (Minn. 1977)). Yet "[t]he law does not require mathematical precision in proving lost profits—only proof to a reasonable certainty." *Hydra-Mac*, 450 N.W.2d at 921. "Once the fact of loss has been shown, the difficulty of proving its amount will not preclude recovery so long as there is proof of a reasonable basis upon which to approximate the amount." *Poppler*, 834 N.W.2d at 546 (quoting *Leoni*, 255 N.W.2d at 826).

Here, the district court found that "[t]he appraisal award for the window replacement, obtained through [Capital Construction's] work between April 2018 and July 2019, was $31,709.37." The district court credited E.B.'s testimony that Capital Construction "would bill at $100 hourly" and expected to earn about $5,000 in profit. But the district court also found that "it was clear that the figures [E.B.] stated were merely estimations" and that "[n]o documentary evidence was submitted in support of his claims." That said, the district court determined that the parties' contract "unambiguously provides that the total price of the work would include the appraisal award, plus 10% overhead and

10% profit." And the district court decided that, "absent the breach[,] [Capital Construction] could . . . [have] reasonably expect[ed] to [have] receive[d] $6,341.87, representing 10% overhead and 10% profit on the job."

In other words, the district court's October 2024 findings of fact, conclusions of law, and order following remand awarded Capital Construction actual damages for the overhead costs it incurred, *see Poppler*, 834 N.W.2d at 546, and expectation damages that "attempt to place [Capital Construction] in the same position as if the [Hanzliks] had complied with the contract," *Logan*, 603 N.W.2d at 663. We conclude that the district court did not err in doing so. The Hanzliks have never challenged the district court's determination that they breached the contract. Thus, Capital Construction was "entitled to be placed in the position" it would have been had the Hanzliks not canceled the parties' agreement. *Id.* In deciding the damages award after considering both E.B.'s testimony and the contract-price provision of the parties' agreement, the district court did not err in determining that Capital Construction had carried its burden of "establish[ing] a reasonable basis for approximating [the] loss." *Galaxy Wireless*, 8 N.W.3d at 705.

Based on our careful review of the record, we conclude that the evidence supports the district court's award of damages "to a reasonable certainty." *Poppler*, 834 N.W.2d at 546 (quotation omitted); *see also Bender*, 971 N.W.2d at 262. Because the parties agreed to the contract-price provision and because the profit-and-overhead damages award aligns with E.B.'s estimate—which the district court generally credited, thus requiring our deference—we conclude that the district court's application of the ten-percent-overhead-and-ten-percent-profit formula to the appraisal award was contemplated, foreseeable, and a "reasonable basis upon which to approximate the [damages] amount." *Poppler*, 834 N.W.2d at 546 (quotation omitted); *see also* Minn. R. Civ. P. 52.01; *Lesmeister*, 330 N.W.2d at 103; *see also Franklin Mfg.*, 248 N.W.2d at 325; *Porch*, 642 N.W.2d at 477.

In so concluding, we respectfully disagree with the Hanzliks' argument that the contract-price provision of the parties' agreement is an unenforceable penalty. As just mentioned, the district court's profit-and-overhead award of $6,341.87 is consistent with E.B.'s estimate that Capital Construction "expected to earn around $5,000 profit from the project," which the district court generally credited. Given that credible testimony, we conclude that the district court's reliance on the contract-price provision of the parties' agreement did not result in a greatly disproportionate damages award that is an unenforceable penalty. *See Gorco Constr.*, 99 N.W.2d at 75 (footnote omitted) (explaining that, "when the measure of damages resulting from a breach of contract is susceptible of definite measurement, [the Minnesota Supreme Court] uniformly held an amount greatly disproportionate to be a penalty").

In short, the district court did not err in awarding damages for overhead and profit because the damages award is reasonably supported by the oral and documentary evidence presented at trial. *See Bender*, 971 N.W.2d at 262; *Kenney*, 963 N.W.2d at 221.

B. None of the Hanzliks' challenges to the district court's findings of fact warrant reversal.

The Hanzliks also challenge some of the district court's findings of fact. We conclude that their arguments about the district court's factual findings do not require that we reverse.

The Hanzliks contend that the district court incorrectly found that neither the contract nor the appraisal award "was objected to by [the Hanzliks] at trial, nor did [the Hanzliks] attack the contents of those exhibits."[1] In support of this contention, the Hanzliks cite their pretrial motion to exclude the contract and the appraisal award based on Capital Construction's failure to timely disclose those documents as trial exhibits "per the [s]cheduling [o]rder dated January 7, 2022." The parties argued the Hanzliks' motion to exclude on the first day of trial.[2] Thus, one aspect of the district court's findings of fact—that the Hanzliks did not object to the admission of the contract and the appraisal award—is clearly erroneous because it is not reasonably supported by the evidence as a whole. *See Kenney*, 963 N.W.2d at 221.

That said, our review of the trial transcript reveals that the Hanzliks did not challenge the veracity of either exhibit, as the Hanzliks acknowledged during oral argument. Instead, the Hanzliks argued only that—notwithstanding that the contract and the appraisal award were both attached to the complaint that commenced this litigation—Capital Construction's disclosure of those documents as trial exhibits was untimely. Thus, the other aspect of the district court's findings of fact—that the Hanzliks "did not attack

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[1] The Hanzliks also maintain on appeal that the contract and the appraisal award were not properly authenticated. But "[a] reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). The Hanzliks never challenged the authenticity of either exhibit in the district court. We therefore decline to consider in the first instance on appeal whether the contract and the appraisal award were properly authenticated. *See id.*

[2] The district court ultimately received the contract and the appraisal award in evidence because those documents were filed with Capital Construction's complaint.

the contents of those exhibits"—is reasonably supported by the evidence and therefore not clearly erroneous. *See id.*

"No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order . . . is ground for . . . disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice." Minn. R. Civ. P. 61. Appellate courts will "not reverse unless there is error causing harm to the appealing party. In other words, error without prejudice is not ground for reversal." *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (quotation omitted). Because the Hanzliks have not shown on appeal how they are prejudiced by the district court's erroneous finding of fact that the contract and the appraisal award were admitted without objection, their challenge to that factual finding does not supply a ground for reversal. *See id.*

The Hanzliks also maintain that the district court "incorrectly found that the parties['] cont[r]act unambiguously provide[d] that the total work would include the appraisal award, plus '10% overhead and 10% profit.'" "Whether a contract is ambiguous is a question of law that [appellate courts] review de novo." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). As much as the Hanzliks' argument challenges the district court's interpretation of the contract as unambiguously providing that "10% overhead and 10% profit approved by Owner's insurer . . . constitute[s] the price of the work," we decline to consider that contention. In the district court proceedings on remand that followed their first appeal, the Hanzliks never maintained that any provision of the contract was ambiguous; instead, they asserted only that the liquidated-damages clause was unenforceable. Thus, any contractual-ambiguity claim by the Hanzliks is not properly before us. *See Thiele*, 425 N.W.2d at 582.

We therefore conclude that none of the Hanzliks' challenges to the district court's findings of fact warrant reversal.[3]

Affirmed.

[3] In its appellate brief, Capital Construction asks that we "remand only the issue of attorney fees to the [district] court" to permit the district court "to issue an award of additional attorney fees, to include Capital [Construction]'s fees incurred in this appeal." A party seeking attorney fees on appeal "shall submit such a request by motion under Rule 127." Minn. R. Civ. App. P. 139.05, subd. 1. The motion "must be submitted no later than within the time for taxation of costs, or such other period of time as the court directs." *Id.*; *see also* Minn. R. Civ. App. P. 139.03, subd. 1 ("A prevailing party seeking taxation of costs and disbursements shall file and serve a notice of taxation of costs and disbursements within 14 days of the filing of the court's order or decision."). Because Capital Construction has not submitted its attorney-fee request by motion under Minnesota Rule of Civil Appellate Procedure 127, Capital Construction's attorney-fee request is not properly before us, and we decline to consider it at this time. *See State Bank of Cokato v. Ziehwein*, 510 N.W.2d 268, 270 (Minn. App. 1994) (concluding that the respondent bank's request that "this court. . . remand for an award of attorney fees and costs for [the] appeal" was "not . . . appropriate" and instead stating that "[t]he bank may recover the reasonable attorney fees and costs of appeal upon the filing of a petition and supporting documentation with this court within [ten] days of the filing of [that] opinion"), *rev. denied* (Minn. Mar. 15, 1994).