

*This opinion is nonprecedential except as provided by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
A24-2026**

Todd A. Wiederich, et al.,
Respondents,

vs.

Michael S. Horn,
Appellant.

**Filed September 15, 2025
Affirmed
Bjorkman, Judge**

Otter Tail County District Court
File No. 56-CV-23-1641

Matthew S. Van Bruggen, Curtis D. Ripley, Pemberton Law, P.L.L.P., Wadena, Minnesota
(for respondents)

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(for appellant)

Considered and decided by Harris, Presiding Judge; Bjorkman, Judge; and Bratvold,
Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges a judgment establishing a boundary by practical location, arguing that the district court abused its discretion by (1) granting respondents' motion to reconsider based on a claim they did not advance at trial, and (2) admitting hearsay

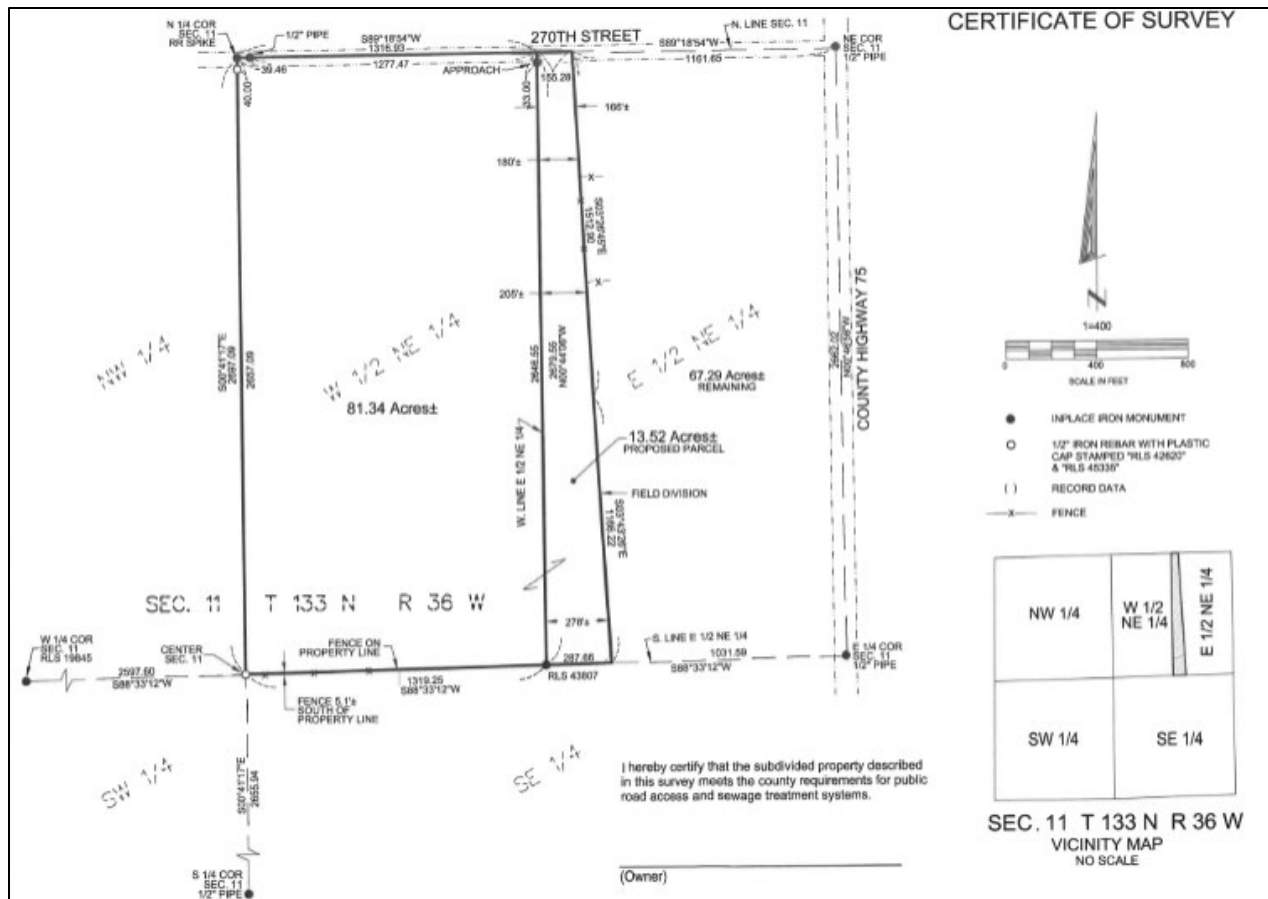
evidence on which it relied to find that respondents proved a practical boundary by express agreement. We affirm.

FACTS

Appellant Michael S. Horn and respondents Todd A. Wiederich and Tiffany A. Wiederich (together, the Wiederichs) own adjacent agricultural land. All the property held by both parties was once owned by Horn's grandfather (grandfather). Grandfather conveyed the western half of the property (the western parcel) to the Wiederichs by a timely recorded warranty deed in 2011. Grandfather retained the eastern half of the property (the eastern parcel) until 2014, when he conveyed a remainder interest in the parcel to Horn, reserving a life estate for himself. Grandfather died in 2018, leaving Horn as the fee-simple owner of the eastern parcel.

At issue here is a discrepancy between the recorded boundary between the two parcels—the location of which is undisputed—and a long-standing fence line that has historically functioned as the divide between the parcels. The fence line is east of the recorded boundary line and runs north to south at a slight angle, creating a trapezoidal plot of land comprising approximately 13.52 acres (the disputed land).¹

¹ The depicted land survey imagery is a trial exhibit that has been cropped for privacy.



including the disputed land. The registered land surveyor hired by the Wiederichs testified that the fence was part of “a very obvious field division,” separating “tillable” farmland to the west from “grassland” to the east.

Horn testified that, when grandfather owned and farmed all of the land, he did not use physical structures to demarcate the two parcels. But Horn acknowledged that, following grandfather’s retirement in the early 2000s and before the sale to the Wiederichs, grandfather had often rented out the western portion of the property—from the fence line westward—to a single farmer.

Around 2017, Horn became aware that the fence line may not be the recorded boundary between the two parcels. He approached grandfather about his concerns that the Wiederichs were farming the Horns’ land, but grandfather told him to “let it go.” Horn did so, out of respect for grandfather’s wishes. It was not until December 2022—approximately five years after grandfather’s death—that Horn again acted, commissioning a land surveyor to determine the legal boundary.

At the conclusion of the trial, the district court invited the parties to submit proposed findings of fact, conclusions of law, and orders for judgment. After receiving these submissions, the district court filed an order denying the Wiederichs’ claims and declaring the recorded boundary as the legal boundary between the two parcels. In an accompanying memorandum of law, the court explained that the Wiederichs “argue[d] only” that they had acquired the disputed land “either (1) by adverse possession, or else (2) under the doctrine of practical boundar[y] by acquiescence.” The court determined the Wiederichs had not proven that they possessed the disputed land for the 15 years required for both claims. The

district court went on to note that “[t]he undisputed facts introduced at trial would have supported a claim for practical boundar[y] by express agreement,” but concluded that the Wiederichs had not pleaded or presented such a claim at trial.

The Wiederichs moved the district court to reconsider, asserting that they made a claim of practical boundary by express agreement at trial and in their proposed findings. Horn agreed, stating in his opposing memorandum that he “will not take issue with [the Wiederichs’] argument that [they] did, in fact, seek to establish the boundary between [the parties’] respective properties via the doctrine of boundary by practical location by express agreement at the trial of this matter.” Following a hearing, the district court granted the Wiederichs’ motion and declared that the fence line divides the eastern and western parcels. While noting that it “maintain[ed] some degree of skepticism” about whether the Wiederichs’ original filings had properly raised an express-agreement claim, the court decided the claim on its merits because Horn did not claim prejudice or unfair surprise and it was “fair and just” to do so.

Horn subsequently moved for amended findings or a new trial, arguing that the district court should have denied the Wiederichs’ motion to reconsider because it improperly raised a new claim. Alternatively, he urged the court to amend its findings related to the existence of an express agreement because they are based on inadmissible hearsay. The district court denied the motion, explaining that it had not considered a new argument posttrial and that the challenged statement is a nonhearsay verbal act.

Horn appeals.

DECISION

Horn contends that the district court abused its discretion by (1) permitting the Wiederichs to argue a claim of practical boundary by express agreement for the first time on reconsideration, and (2) permitting hearsay testimony from Todd regarding the agreement. We address each argument in turn.

I. The district court did not consider a new argument on reconsideration.

“Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances.” Minn. Gen. R. Prac. 115.11. A reconsideration motion is not an opportunity to present “facts or arguments available when the prior motion was considered.” Minn. Gen. R. Prac. 115.11 1997 comm. cmt.; *see also State v. Allwine*, 963 N.W.2d 178, 190-91 (Minn. 2021) (holding that a reconsideration motion does not permit the introduction of new evidence and citing Minn. Gen. R. Prac. 115.11 1997 comm. cmt.). Rather, it is an opportunity for the district court to consider whether an earlier decision was “palpably wrong in some respect.” Minn. Gen. R. Prac. 115.11 1997 comm. cmt. We review a district court’s decision to grant or deny a motion to reconsider for an abuse of discretion. *Goerke Family P’ship v. Lac qui Parle-Yellow Watershed Dist.*, 857 N.W.2d 50, 52-53 (Minn. App. 2014).

Horn argues that the district court abused its discretion by granting the Wiederichs’ motion because it entertained a new theory of relief, exceeding the “permissible scope” of a reconsideration motion. The district court rejected this argument, explaining that it “granted [the Wiederichs’] post-trial motion because it reconsidered the fact of whether

[they] had presented the claim previously”—determining that they had. Horn asserts this is a “distinction without a difference.” We are not persuaded for two reasons.

First, the record convinces us that Horn waived this argument. *Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 631 & n.3 (Minn. 2017) (stating that “[w]aiver is the intentional relinquishment of a known right,” while forfeiture is the “failure to timely assert a right” (quotation omitted)). As noted above, Horn’s written response to the reconsideration motion states that he “will not take issue with [the Wiederichs’] argument that [they] did, in fact, seek to establish the boundary between [the eastern and western parcels] via the doctrine of boundary by practical location by express agreement at the trial of this matter.” In the same memorandum, Horn expresses his belief that the Wiederichs “arguably raised the issue of express agreement to a sufficient degree to invoke the boundary by practical location through express agreement prong to at least a threshold level.” Horn’s lawyer reiterated this position at the motion hearing, explaining: “[O]ur argument in this case has been [the Wiederichs] arguably raised enough questions at trial that the Court could have considered [practical boundary by express agreement].” On this record, we conclude that Horn waived his argument that the district court improperly considered a new argument on reconsideration.

Second, Horn’s argument fails on its merits. Because Minnesota is a notice-pleading state, “absolute specificity” in pleading is not required. *Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 500 (Minn. 2021) (quotation omitted). A pleading is satisfactory if it provides “information sufficient to fairly notify the opposing party of the claim against it.” *Id.* (quotation omitted). Accordingly, a party may plead their case

through broad, general statements that may be conclusory in nature. *Id.* at 503. That is what the Wiederichs did. Their complaint broadly asserted that the fence line is “the practical location of the boundary” between the eastern and western parcels and requested relief establishing the fence line as the legal boundary “whether by adverse possession, practical location, or otherwise.” At trial, they presented evidence of an express agreement between Todd and grandfather that the existing fence line was the boundary between the two parcels. *See* Minn. R. Civ. P. 15.02 (stating “[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”); *Roberge v. Cambridge Coop. Creamery Co.*, 67 N.W.2d 400, 404 (Minn. 1954) (explaining that a claim may be litigated by consent “where the novelty of the issues sought to be raised is reasonably apparent and the intent to try these issues is clearly indicated by a failure to object or otherwise”). Indeed, Horn’s timely objection to Todd’s testimony about the purchase terms undermines his contention that the Wiederichs did not present their express-agreement claim at trial. Based on this record, we conclude that the Wiederichs sufficiently raised and presented their practical-boundary-by-express-agreement claim prior to seeking reconsideration.²

² The district court cited *Juntti v. Bedore*, No. A09-2328, 2010 WL 3306932 (Minn. App. Aug. 24, 2010), to support its determination that it was “fair and just” to consider the practical-boundary-by-express-agreement argument on its merits. Horn argues that this reliance is misplaced because *Juntti* did not “involve a claim for express agreement being raised for the first time in a motion to reconsider.” Since we concluded above that the district court did not consider a new argument for the first time on reconsideration, we do not address Horn’s argument.

II. The district court did not abuse its discretion by admitting Todd’s testimony regarding his express agreement with grandfather.

Horn next asserts that we should reverse because the district court relied on inadmissible hearsay. To establish a practical boundary by express agreement, a party must first prove there was an “express agreement between the landowners to set an exact, precise line.” *Slindee v. Fritch Invs., LLC*, 760 N.W.2d 903, 907 (Minn. App. 2009) (quotations omitted). The disseizor bears the burden to “clearly, positively, and unequivocally” establish the boundary’s practical location. *Id.*

Hearsay is an out-of-court statement offered for the truth of the matter asserted and is generally inadmissible unless subject to a prescribed exception or exclusion. Minn. R. Evid. 801(c), 802. The district court has broad discretion when ruling on evidentiary matters, including the admission of hearsay, and we will not reverse absent an abuse of that discretion. *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). The appealing party bears the burden to establish both evidentiary error and resulting prejudice. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997).

Over Horn’s hearsay objection, Todd testified:

Well, we run a cattle farm, and we needed more farmland. And [grandfather] had approached me about selling the west, from the fence west of the property that [grandfather] owned. . . .

And we agreed on a price. [Grandfather] and I agreed on a price. And we agreed that the fence was—to the west is what we were purchasing.

In his motion for amended findings, Horn reasserted his objection, characterizing Todd’s statement as untrustworthy, inadmissible hearsay. The district court concluded that the statement is admissible as a nonhearsay verbal act.³

Occasionally, an oral or written statement is significant in a lawsuit not because of its truth or falsity, but because it carries legal implications. 11 Peter N. Thompson, *Minnesota Practice* § 801.04 (5th ed. 2023). A statement offered for its legal significance is considered a “verbal act” and is not governed by the hearsay rule. *Id.* Our supreme court has applied the verbal act doctrine in the context of contract formation. *Claggett v. Chicago, Milwaukee, & St. Paul Ry. Co.*, 193 N.W. 957, 957 (Minn. 1923). Accordingly, “[w]hen the making or existence of an oral contract becomes an issue in a law suit, any witness who was present when it was made may testify as to what both parties said touching the terms of the contract.” *Lepak v. Lepak*, 261 N.W. 484, 485 (Minn. 1935) (quotation omitted).

On appeal, Horn does not dispute—and we agree—that Todd’s statement regarding his agreement with grandfather to purchase the land west of the fence is admissible as a verbal act. Still, he argues that the district court “[went] beyond” using the statement as such and, instead, relied on it to prove the truth of the matter asserted—that Todd and grandfather agreed that the fence line is the legal boundary between the two parcels. This argument is unavailing. The challenged statement relates to one of the contract terms—

³ The district court also concluded that Todd’s testimony is admissible as a statement against grandfather’s interest under Minn. R. Evid. 804(b)(3). Because we conclude that the statement constitutes a nonhearsay verbal act, we do not consider this alternative basis for admission.

what property the Wiederichs purchased from grandfather. But that is the exact purpose for which verbal-act evidence may be admitted. *See id.* Nothing in the record suggests that the district court relied on Todd's statement in any way other than establishing the terms of the oral contract. In short, we discern no abuse of discretion by the district court in admitting or considering the statement as a verbal act.

Finally, Horn asserts that the district court should not have considered the statement because Todd had "ample motive to testify falsely." We agree with the district court that any such motive goes toward the weight of Todd's testimony, not its admissibility. And the Wiederichs offered ample corroborating evidence related to grandfather's use of the land.

In sum, the district court did not permit the Wiederichs to present a new claim in their motion for reconsideration. And we see no abuse of discretion by the district court in admitting Todd's statement regarding the terms of the agreement. For these reasons, we conclude that the district court did not abuse its discretion in granting the Wiederichs' motion and establishing the fence line as the boundary by practical location.

Affirmed.