STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0093

Lorenzo Tejeda, et al.,
Respondents,

vs.

David Maceda,
Appellant.

Filed August 11, 2025
Reversed and remanded
Worke, Judge
Concurring specially, Johnson, Judge

Hennepin County District Court
File No. 27-CV-24-9044

Steven R. Little, SRL Law, PLLC, St. Paul, Minnesota (for respondents)

Aaron R. Thom, Samantha J. Ellingson, Thom Ellingson, PLLP, Minneapolis, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges a district court decision to deny his motion for advancement under Minn. Stat. § 322C.0408 (2024). Appellant argues that the district court erred because "the facts then known" did not "preclude indemnification," and therefore do not bar advancement. *See* Minn. Stat. § 322C.0408, subd. 3(2). Because the district court relied on disputed allegations in the pleadings that do not preclude indemnification, we reverse and remand for proceedings consistent with this opinion.

FACTS

Respondents Lorenzo Tejeda and Catrina's II, LLC, sued appellant David Maceda in April 2024. Respondents' complaint set forth the following allegations. Tejeda, Maceda, and a third individual[1] formed the LLC and opened a restaurant in St. Anthony, Minnesota. Between 2018 and 2023, Maceda made a series of unauthorized payments from the LLC's credit-card and checking accounts. He also fraudulently endorsed a check from the federal government. Based on the foregoing allegations, respondents asserted claims for breach of fiduciary duty, conversion, and unjust enrichment. Respondents also sought an order to disassociate Maceda as a member of the LLC.

In his answer, Maceda admitted that he was a member of the LLC. However, he denied that any charges he put on the LLC credit card, or payments from the checking account, were unauthorized. He also denied that he fraudulently endorsed the check from the federal government. Furthermore, Maceda alleged that he "made substantial personal sacrifices to attempt to keep the restaurant afloat," often working 12- or 14-hour shifts to perform his management duties. To manage the cost of business, "Maceda hired his family members to perform tasks." Maceda alleged that when he told Tejeda that the restaurant had insufficient cashflow to continue operating, Tejeda refused to put any more money into the restaurant and stated that if the restaurant had to close, Maceda should do so "without

[1] The third individual is not a party to this litigation.

paying off its debt, vendors, staff, or payroll." However, Maceda was unwilling to withhold wages, and around November 2023, he paid staff for the final time from the LLC's checking account.

Based on the foregoing allegations, Maceda denied liability for all the counts in respondents' complaint and asserted counterclaims for breach of contract and unjust enrichment. He also requested a court-ordered buy-out of his membership interest in the LLC or judicial dissolution of the LLC.

In their answer to Maceda's counterclaims, respondents denied, among other allegations, that (1) Maceda hired family to help manage the restaurant, (2) Tejeda told Maceda not to pay staff should they need to close the restaurant, and (3) Maceda paid staff for the final time out of the LLC checking account.

Maceda sent a letter to the LLC requesting that it advance his litigation expenses under Minn. Stat. § 322C.0408. However, the LLC denied the request. Maceda then filed a motion in district court to compel the LLC to provide advancement despite its denial. Maceda argued that he was entitled to advancement because respondents sued him in his official capacity; the LLC's operating agreement did not limit advancement; he provided the LLC with a written request for advancement, which the LLC rejected; and none of "the facts then known" would "preclude indemnification." *See* Minn. Stat. § 322C.0408, subd. 3. Maceda noted that, although respondents "made a number of allegations against [him], these are mere allegations—which [he] vehemently disputes." To support his motion, Maceda provided a copy of the LLC's operating agreement. The operating agreement guaranteed LLC managers and governors indemnification "as required or permitted" under Minnesota law and did not impose any limits on advancement. Maceda also attached a written demand to the LLC, whereby he expressed a good-faith belief that he satisfied the criteria for indemnification.

In November 2024, the district court issued an order denying the motion for advancement. The district court reasoned as follows:

> Maceda's Answer and Counterclaim acknowledges that Tejeda told him that if Catrina's had to close, Maceda should close it without paying staff or payroll. Maceda states that he was 'unwilling to withhold from Catrina's St. Anthony's staff the money they had already earned, and . . . wrote paychecks to staff from Catrina's II checking account.' Maceda also acknowledged that he hired his family members as staff at Catrina[']s. Paying his family from Catrina's checking account in preference to retaining funds within the business represents a failure to act in good faith, indicates he received an improper benefit from his actions . . . and establishes that he knew his actions were not in the interests of Catrina's. Thus, the facts currently known demonstrate that Maceda is not eligible for indemnification.
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> The other facts alleged in Maceda's pleadings and affidavits suggest that there may be ameliorating circumstances that, if proven at trial, might justify his actions and entitle him to indemnification, but the Court cannot weigh disputed facts at this stage.

(Citations omitted.)

Maceda appealed.

DECISION

On appeal, Maceda argues that the district court erred by denying his motion for advancement under Minn. Stat. § 322C.0408. He contends that, contrary to the district court's order, "the facts then known" did not "preclude indemnification" and therefore do not bar advancement. *See* Minn. Stat. § 322C.0408, subd. 3(2). We review de novo a district court's decision to deny advancement. *Reichel Foods, Inc. v. Taylor*, No. A24-0396, 2024 WL 3935001, at *3 (Minn. App. Aug. 26, 2024)[2] (citing *Asian Women United of Minn. v. Leiendecker*, 789 N.W.2d 688, 690 (Minn. App. 2010)).

"Advancement refers to the right to immediate interim relief from the personal out-of-pocket financial burden of paying the significant on-going expenses inevitably involved with investigations and legal proceedings." *Id.* at 691. The related concept of indemnification refers to reimbursement for financial losses after litigation ends. *Id.* When individuals are parties to lawsuits by reason of their official capacity with a business or nonprofit, advancement and indemnification protect those parties from the personal cost of financing litigation. *See id.* Accordingly, Minnesota has a series of statutes that govern when and how businesses and nonprofits are to provide advancement and indemnification to personnel. *See* Minn. Stat. §§ 322C.0408 (limited liability companies), 317A.521 (2024) (nonprofit corporations), 302A.521 (2024) (business corporations). Businesses and nonprofits may eliminate, limit, or qualify their obligation to provide advancement or indemnification through their governing documents. Minn. Stat. §§ 322C.0408, subd. 4, 317A.521, subd. 4, 302A.521, subd. 4.

Despite the interlocutory nature of an appeal from an order denying advancement, such orders are immediately appealable through the collateral-order doctrine. *Leiendecker*,

[2] This opinion is nonprecedential and, therefore, not binding. To the extent we cite nonprecedential opinions, we do so only as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

789 N.W.2d at 690. This is because, unless received promptly, parties lose the benefit of advancement by making a different set of critical decisions on representation and litigation strategy than they otherwise would. *See id.*

Here, because Maceda requested advancement from an LLC, section 332C.0408 applies.[3] That section states that:

> [I]f a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the limited liability company, to payment or reimbursement by the limited liability company of reasonable expenses, including attorney fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
>
> (1) upon receipt by the limited liability company of a written affirmation by the person of a good faith belief that the criteria for indemnification . . . have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the limited liability company, if it is ultimately determined that that the criteria for indemnification have not been satisfied; and
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> (2) after a determination that *the facts then known* to those making the determination *would not preclude* indemnification under this section.

Minn. Stat. § 322C.0408, subd. 3 (emphasis added). As relevant here, a party is entitled to indemnification if

> with respect to the acts or omissions of the person complained of in the proceeding, the person . . .
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> (2) acted in good faith;
>
> (3) received no improper personal benefit[;] . . .

[3] We note that Maceda can pursue advancement even though the LLC itself is among the parties that sued him. *See* Minn. Stat. § 322C.0408, subd. 1(d) (defining "[p]roceeding" to include "a proceeding by or in the right of the limited liability company"); *see Leiendecker*, 789 N.W.2d at 693 (interpreting nearly identical language under Minn. Stat. § 317A.521 (2008) to allow advancement from a nonprofit when the nonprofit was an opposing party in the litigation).

> (5) in the case of acts or omissions occurring in the official capacity . . . reasonably believed that the conduct was not opposed to the best interests of the limited liability company.

Minn. Stat. § 322C.0408, subd. 2(a). The extent to which a party is entitled to advancement or indemnification is subject to limitations in an LLC's articles of organization or operating agreement. *Id.*, subds. 3-4.

Once an LLC receives a written request for advancement, the LLC decides internally whether the requesting party satisfies subdivision 3. *See id.,* subd. 6(a)(1)-(2). If the LLC denies advancement, the requesting party may pursue relief in district court. *Id.*, subd. 6(a)(3). Then, if the requesting party meets "the burden of establishing" that it satisfies subdivision 3, the district court orders the LLC to provide advancement despite the LLC's previous denial. *Id.* In sum, "[i]f the district court determines that the party seeking advancement has satisfied [all] procedural requirements [under subdivision 3(1)], that the [LLC] did not prohibit or impose conditions on advancements or indemnification, and that no known facts *preclude* indemnification, the district court must order the [LLC] to advance fees accordingly." *CorVascular Diagnostics, LLC v. Talcott*, No. A16-2048, 2017 WL 3687504, at *3 (Minn. App. Aug. 28, 2017), *rev. granted* (Minn. Nov. 14, 2017) *and appeal dismissed* (Minn. Dec. 18, 2017).

Here, the parties do not dispute that Maceda satisfied the procedural requirements for advancement under subdivision 3(1), nor do they dispute that the LLC's governing documents did not limit his entitlement to advancement or indemnification. Rather, the sole issue on appeal is whether the district court properly applied subdivision 3(2) to determine whether "the facts then known" would "preclude indemnification," and thereby bar advancement.

In *CorVascular*, we interpreted the phrase "the facts then known" to exclude "[u]ndetermined or disputed factual issues." *See id.* (interpreting predecessor LLC-statute to section 322.0408, which included nearly identical language). We interpreted the phrase "would not preclude" to require "the facts then known" to "not *certainly disqualify* the requesting party" from indemnification. *Id.* Ultimately, we reversed the district court's order denying advancement and remanded for further proceedings because the district court erroneously considered disputed facts, and no undisputed facts would have precluded indemnification. *Id.* at *4. We find *CorVascular* persuasive and apply its reasoning to this case.

Here, in its order denying advancement, the district court stated that (1) Maceda "hired his family members as staff at [the restaurant]"; (2) "Tejeda told [Maceda] that if [the restaurant] had to close, Maceda should close it without paying staff or payroll"; (3) and Maceda withdrew money from the LLC's checking account to pay staff for the final time. From those facts, the district court inferred that Maceda paid his family money from the LLC's "checking account in preference to retaining funds within the business," which "represents a failure to act in good faith," "indicates he received an improper benefit from his actions," and "establishes that he knew his actions were not in the best interests of [the LLC]."

We conclude that the district erred by determining that "the facts then known" would "preclude indemnification." *See* Minn. Stat. § 322C.0408, subd. 3. First, the district court erroneously relied on disputed allegations to identify "the facts then known" because it relied on facts that respondents themselves denied in their answer to Maceda's counterclaims. Second, even if those allegations were undisputed, we are unconvinced that they would, by themselves, "certainly disqualify" Maceda from indemnification. *See CorVascular*, 2017 WL 3687504, at *3. Although Maceda states in his answer that he "hired his family members to perform tasks," nowhere does he say that the staff he paid for the final time in November 2023 were in fact family. And even if they were family, such an act would not necessarily constitute the kind of improper behavior that would preclude indemnification, particularly when employers have a legal obligation to pay employees the wages that they earn. *See* Minn. Stat. § 181.101(a) (2024).

When Maceda moved for relief from the district court, he demonstrated that the LLC's governing documents in no way limited advancement or indemnification and provided a copy of his written demand to the LLC. He stressed that he "vehemently dispute[d]" respondents' allegations against him and argued that "the facts then known" would not "preclude indemnification." *See* Minn. Stat. § 322C.0408, subd. 3(2). Nevertheless, the district court relied on disputed allegations in Maceda's answer—allegations that even if undisputed would not "certainly disqualify" him from indemnification—to deny advancement. *See CorVascular*, 2017 WL 3687504, at *3. Because the district court erred, we reverse and remand for proceedings consistent with this opinion.

Reversed and remanded.

JOHNSON, Judge (concurring specially)

I concur in the opinion of the court insofar as it concludes that this court should reverse and remand to the district court for further proceedings. But my reasons for that disposition are substantially different from those stated in the opinion of the court. In my view, the LLC statute does not confine a district court to the undisputed facts when the district court rules on a motion for advancement. When making that decision, the district court should be free to weigh the evidence, to hold the party seeking advancement to his or her burden of establishing eligibility for an advancement, and to find the relevant "facts then known to" the district court. Accordingly, I respectfully disagree with my colleagues about the applicable law and, consequently, the nature of further proceedings on remand.

As stated in the opinion of the court, a party may be entitled to indemnification or advancement only if the person "acted in good faith," "received no improper personal benefit," and "reasonably believed that [his or her] conduct was not opposed to the best interests of the limited liability company." Minn. Stat. § 322C.0408, subd. 2(a)(2), (3), (5) (2024); *see also id.*, subd. 3. In this case, the court reasons that the district court erred on the ground that it "erroneously relied on disputed allegations to identify 'the facts then known,'" including "facts that respondents . . . denied in their answer to Maceda's counterclaims." *Supra* at 9.

The court's analysis is not compelled by the text of the statute. To the contrary, the statutory text suggests a different approach, for two reasons.

A.

First, the statutory phrase "the facts then known to those making the determination," Minn. Stat. § 322C.0408, subd. 3(2), does not expressly require a district court to accept a narrow set of facts that are not disputed by either party. Rather, the statute requires the district court to base the advancement determination on "the facts then known to" the district court. *Id.* District courts routinely weigh evidence, resolve conflicts in the evidence, and make findings of fact. If the legislature had intended for district courts to decide advancement motions based solely on facts that are not disputed by either party, the legislature would have chosen different language to make that point clear.

Furthermore, it is not uncommon for district courts to make preliminary findings to resolve pre-trial issues. For example, "the facts on which [a] trial court acts in granting a temporary injunction are, by the nature of the situation, provisional." *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321 (Minn. 1965); *see also Whitaker v. 3M Co.*, 764 N.W.2d 631, 638 (Minn. App. 2009) (stating that "factual findings at the class-certification stage are not binding on the ultimate trier of fact"), *rev. denied* (Minn. July 22, 2009). The LLC statute's emphasis on the timing of the district court's advancement determination ("then") implies that the facts known at the time of the advancement determination are not binding on the court or the parties throughout the pendency of the case but, rather, are only preliminary or provisional in nature.

It must be remembered that the "facts then known to those making the determination" language applies to all persons and entities with statutory authority to determine a person's eligibility for an advancement, including an LLC's board of governors, an LLC's special legal counsel, and an LLC's members. *See* Minn. Stat. § 322C.0408, subd. 6(a)(1)-(2). Thus, if "the facts then known to" a district court are limited to the undisputed facts (as the court reasons), the same presumably would be true when a person initially seeks advancement directly from an LLC. *See id.*, subd. 6(a)(1)-(2), (b). In that event, the LLC's decisionmakers would be required to disregard facts known to the company but disputed by the person seeking an advancement.[1]

B.

Second, the statute expressly imposes an evidentiary burden on the party seeking advancement, which further indicates that a district court's advancement determination should be based on a weighing of the evidence and factual findings. To be specific, the statute provides that the person seeking advancement bears "the burden of *establishing* that the person is entitled to" advancement. *Id.*, subd. 6(a)(3) (emphasis added). Minnesota appellate courts frequently use the word "establish" to describe an evidentiary burden with

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[1]The "facts then known to those making the determination" phrase first appeared in a Minnesota statute in 1981, when the legislature and governor enacted the law that became chapter 302A of the Minnesota Statutes. 1981 Minn. Laws ch. 270, § 84, at 1198 (enacting Minn. Stat. § 302A.521 (Supp. 1981)). It appears that the phrase was borrowed from the model business corporations act (MBCA). *See* Model Bus. Corp. Act § 8.53(a) (1969) (Am. Bar Ass'n, revised 1984); Committee on Corporate Laws, *Changes in the Model Business Corporation Act Affecting Indemnification of Corporate Personnel*, 36 Bus. Law 99, 99, 105 (1980). At the time of Minnesota's adoption of the phrase, the MBCA used it to guide a *corporation's* voluntary, discretionary decision to advance expenses to a director who was made a party to a legal proceeding, so long as the director satisfied certain criteria, which are equivalent to the criteria in subdivision 3(1)-(2) of section 322C.0408. *See* Model Bus. Corp. Act § 8.53(a). That version of the MBCA did *not* expressly allow a director to request a court order for advancement according to the same criteria. *See id.*; *cf.* Model Bus. Corp. Act § 8.54. Thus, the statutory phrase at the crux of this appeal originally was *not* intended to apply to a *court's* determination of a person's eligibility for indemnification and advancement.

respect to some type of intermediate factual showing that is not an ultimate fact to be proved at trial. *See, e.g.*, *State v. Letourneau*, ____ N.W.3d ____, ____ n.3, 2025 WL 1888770, at *1 n.3 (Minn. July 9, 2025) (noting that state has "burden to establish critical impact" to justify appellate jurisdiction over pre-trial appeal); *State Farm Fire & Cas. v. Aquila Inc.*, 718 N.W.2d 879, 886 (Minn. 2006) (discussing "which party bears the evidentiary burden of establishing an exception to" statute of limitations or statute of repose); *Sigurdson v. Carl Bolander & Sons Co.*, 532 N.W.2d 225, 228 (Minn. 1995) (describing plaintiff's "burden to establish a *prima facie* case" of discrimination under human-rights act). In this situation, it is appropriate to apply the canon against surplusage, which "dictates that we avoid interpretations that would render a word or phrase superfluous, void, or insignificant." *Shefa v. Ellison*, 968 N.W.2d 818, 825 (Minn. 2022) (quotation omitted). The court's interpretation of section 322C.0408 fails to account for and give meaning to the "burden of establishing" phrase in the last sentence of subdivision 6(a)(3).

This court has considered a similar advancement statute with "facts then known" language. *See Asian Women United v. Leiendecker*, 789 N.W.2d 688, 690-94 (Minn. App. 2010) (applying Minn. Stat. § 317A.521, subd. 3 (2008)). But, importantly, the statute at issue in *Leiendecker* (which governs non-profit corporations) did *not* impose an evidentiary burden on the party seeking advancement. *See id.* at 691-92; Minn. Stat. § 317A.521, subd. 6(a)(5) (2008). In any event, the *Leiendecker* opinion does not require a district court to limit the "facts then known" to the facts that are undisputed. In applying the "facts then known" phrase, the *Leiendecker* opinion stated that a district court must "make an independent determination . . . whether the facts then known to the district court would not preclude indemnification under section 317A.521." 789 N.W.2d at 693. A truly *independent* determination would be based on the district court's own understanding of the evidentiary record, not the parties' self-interested allegations and presentations of facts.

It may be that, in some cases, a district court is unable to resolve all conflicts in the parties' evidence without a more extensive factual record or the benefits of cross-examination. In that situation, a district court perhaps could refrain from making findings on certain issues. But a district court should not be forbidden from making findings on disputed factual issues when ruling on an advancement motion. A district court should consider whether the party seeking advancement has satisfied his or her "burden of establishing" an entitlement to advancement and should find "the facts then known to" the district court. *See* Minn. Stat. § 322C.0408, subds. 3(2), 6(a)(3).

In sum, I would reverse and remand for further proceedings on Maceda's advancement motion, with instructions for the district court to make findings of relevant facts and then determine whether those facts would or would not preclude indemnification.