

*This opinion is nonprecedential except as provided by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
A25-0400**

Jessica Anlauf,
Appellant,

vs.

Thomas Gunther, et al.,
Respondents.

**Filed September 15, 2025
Affirmed
Smith, Tracy M., Judge**

Kanabec County District Court
File No. 33-CV-24-213

Jessica H. Anlauf, Braham, Minnesota (self-represented appellant)

Matthew D. Sloneker, William L. Davidson, Jeffrey Niesz, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota (for respondents)

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Jessica Anlauf challenges the district court's order denying her motion to compel arbitration, asserting that the district court erred by finding that she waived her right to arbitration and by finding that she failed to show that one of the respondent-defendants was subject to the arbitration agreement. Because we conclude that the district

court's finding that Anlauf waived her right to arbitration was not clearly erroneous, we affirm.

FACTS

The Malpractice Claim

In December 2015, Anlauf and respondent law firm Gunther Law Office LLC (GLO) entered into an attorney retainer agreement in which Anlauf retained GLO to represent her in “pursuing an abuse of process and malicious prosecution case” against her ex-husband and his attorney, among others. The agreement included an arbitration clause in which Anlauf agreed

that in the . . . event that there is any disagreement concerning the nature or quality of legal services or representation provided by this Agreement or for attorneys' fees charged, that such disagreement will be referred to Arbitration for mandatory binding resolution . . . and that neither party shall have any right to pursue or file any state or federal district court claim against the other as a result of this retainer agreement [sic] any legal services or representation provided.

Anlauf signed the agreement on behalf of herself, and respondent-attorney Thomas Gunther signed on behalf of GLO.

Over the next two months, in January and February 2016, Gunther exchanged a series of emails with Anlauf, in which Gunther explained that he was waiting to initiate the action until the trial court ruled in another case, the outcome of which Gunther believed would affect Anlauf's case. Two and a half years later, in July 2018, Gunther emailed Anlauf stating that the other case he had been waiting on had been decided, and, as a result, Anlauf could “bring [her] claim without fear of an immediate motion to dismiss.” Gunther

also stated that his practice had evolved, that he no longer handled cases like Anlauf's, and that he was returning her retainer and not charging her for time spent on the case.

In January 2020, Anlauf emailed Gunther, stating that she was filing a complaint against Gunther with the Office of Lawyers Professional Responsibility (OLPR) because the statute of limitations for her potential malicious-prosecution claim had expired prior to Gunther returning her file and retainer fee. Gunther responded and acknowledged that he had mistakenly believed that the statute of limitations for a malicious-prosecution claim was six years but, upon review, realized it was only two years. Gunther stated that he had contacted his malpractice carrier and that Anlauf should consult an attorney regarding bringing a malpractice claim against his firm. Neither Anlauf nor Gunther mentioned arbitration or the arbitration clause in those communications.

Proceedings Before the District Court

On July 31, 2024, Anlauf filed a complaint in the district court, asserting claims of legal malpractice, breach of fiduciary duty, and breach of contract against Gunther and respondent law firm, Virnig & Gunther PLLC (V&G). Anlauf also filed a copy of the retainer agreement, an application to waive an affidavit of expert review, and an affidavit to request a fee waiver.

On August 2, 2024, Gunther and V&G filed their answer and a letter notifying the district court that they opposed Anlauf's request to waive an affidavit of expert review and requesting a briefing schedule. That same day, Anlauf filed a letter asserting that a briefing schedule should not be set because "a completed motion" had not yet been filed with the

district court. Anlauf also filed an amended complaint with the district court, adding GLO as a defendant. A few days later, the district court granted Anlauf's request for a fee waiver.

On August 8, 2024, Anlauf filed a notice to remove the assigned judge from the case. Additionally, on August 8, 2024, respondents filed an answer to the amended complaint and both parties signed and filed a civil cover sheet briefly describing the claims. As part of the civil cover sheet, both parties identified a proposed trial date and indicated that mediation was their preferred form of alternative dispute resolution.

A new judge was assigned to the case later in August 2024, and, at the beginning of November 2024, the district court filed a scheduling order, which included a deadline for initial disclosures of December 1, 2024, and a deadline for discovery of March 7, 2025. Respondents served written discovery requests on Anlauf on November 26, 2024. And, on December 16, 2024, Anlauf attempted to direct a subpoena to Gunther's malpractice carrier, but the district court issued a deficiency notice because the subpoena was not signed.

None of the parties' filings, except for the exhibit of the retainer agreement itself, referenced arbitration or the arbitration clause.

Motion to Compel Arbitration

On December 20, 2024, Anlauf moved the district court to compel arbitration, arguing in her memorandum that Gunther was "required to initiate arbitration" but "ha[d] refused" to do so. Anlauf submitted several exhibits with her motion, including the retainer agreement between her and GLO, email correspondence between her and Gunther, and communications between her and OLPR regarding the complaint she filed against Gunther.

None of the exhibits showed that Anlauf previously requested that the case be submitted to arbitration or that Gunther had refused to submit the case to arbitration. Rather, one of the exhibits was an email sent from Anlauf to Gunther in February 2020, in which Anlauf expressed a desire to pursue resolution through the court, stating: “I will be moving forward with retaining the attorney referenced in the [settlement] letter and we will be filing my motions with the court and filing an OLPR complaint against you.”

On January 1, 2025, respondents filed their memorandum opposing Anlauf’s motion, arguing that Anlauf waived her right to arbitration and had not demonstrated that she had a right to arbitration for her claims against V&G. The next day, Anlauf filed her reply and additional exhibits.

As proof that she did not intend to waive her right to arbitration, one of the exhibits that Anlauf filed was an email dated July 21, 2024, ten days before the complaint was filed, in which Anlauf emailed an arbitrator about the cost of arbitration. In her reply, Anlauf asserted that she sent that email

in preparation for her Motion to Compel Arbitration, which she planned to file with [the district court], and which she did file with [the district court], as soon as [she] was allowed to do so, which was dependent upon the outcome of her Application to Waive Expert Review, as well as her previous applications to proceed In Forma Pauperis, and to remove the initial Judicial Officer.

In her reply, Anlauf also argued that Gunther had acted on behalf of both GLO and V&G while providing legal services to Anlauf and, as a result, V&G was also subject to the arbitration clause. In support of that argument, Anlauf filed exhibits showing emails between her and Gunther in October and November 2015, before she signed her retainer

with GLO, in which Gunther's email address and email signature indicated that he was employed with V&G.

Order Denying Motion to Compel Arbitration

A motion hearing was held on January 15, 2025, and on March 10, 2025, the district court filed an order denying Anlauf's motion to compel arbitration. In the order, the district court determined that Anlauf had waived her right to arbitration. In support of its decision, the district court found that Anlauf intended to waive her right to arbitration when, during the five months between filing her complaint and moving to compel arbitration, she made multiple filings with the district court that did not mention her desire to pursue arbitration. The district court also found that the defendants would be prejudiced if arbitration was compelled because "strategies and defenses" were learned due to respondents' participation in the lawsuit. Additionally, the district court determined that Anlauf had not offered any evidence or argument that V&G was subject to the arbitration clause in the retainer agreement between Anlauf and GLO.

Anlauf appeals.

DECISION

Anlauf challenges the district court's determinations that she waived her right to arbitration and that she did not show that V&G should be subject to the arbitration clause in her retainer agreement with GLO. As explained below, we conclude that the district court did not err in determining that Anlauf waived her right to arbitration. Because that conclusion is dispositive, we do not address whether the district court erred in determining that V&G is not subject to the arbitration agreement.

Minnesota law favors arbitration as a means of resolving disputes. *Fedie v. Mid-Century Ins. Co.*, 631 N.W.2d 815, 819 (Minn. App. 2001), *rev. denied* (Minn. Oct. 16, 2001). Minnesota Statutes section 572B.07(a) (2024) provides that “the court shall order the parties to arbitrate” after receiving a “motion of a person showing an agreement to arbitrate and alleging another person’s refusal to arbitrate pursuant to the agreement.” But even where parties have an agreement to arbitrate disputes, arbitration will not be enforced when a party has waived their right to arbitration. *See, e.g., Bros. Jurewicz, Inc. v. Atari, Inc.*, 296 N.W.2d 422, 425-26, 428-29 (Minn. 1980) (rejecting appellant’s argument that arbitration should be compelled based on a predecessor statute because appellant was found to have waived its right to arbitration).¹

“Waiver is the voluntary and intentional relinquishment of a known right.” *Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 798 (Minn. 2004). A waiver of the right to arbitration requires that (1) the party alleged to have waived the right to arbitration had knowledge of and the intent to relinquish that right and (2) the party who is opposing arbitration would be prejudiced if the right were enforced. *Fedie*, 631 N.W.2d at 819-20. Whether a party waived their right to arbitration—including whether a party intended to waive the known right and whether the other party is prejudiced—is a question of fact. *Id.*; *Stern 1011 First St. S., LLC v. Gere*, 937 N.W.2d 173, 177 (Minn. App. 2020), *rev. denied* (Minn. Mar. 25, 2020). As a result, we will not reverse a district court’s finding that a party

¹ In *Brothers Jurewicz*, the statute at issue stated, “On application of a party showing an agreement [to arbitrate] and the opposing party’s refusal to arbitrate, the court shall order the parties to proceed with arbitration” *Id.* at 425-26 (quoting Minn. Stat. § 572.09(a) (1978)).

waived their right to arbitration unless the finding was clearly erroneous. *Gere*, 937 N.W.2d at 177 (citing *Fedie*, 631 N.W.2d at 819).

When reviewing findings of fact for clear error, appellate courts “view the evidence in a light favorable to the findings,” do not find their own facts, do not “reweigh the evidence,” and do not “reconcile conflicting evidence.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotation omitted). “When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* at 223 (quotation omitted).

Knowledge and Intent to Waive

Regarding the first element of waiver, the district court found that Anlauf had knowledge of her right to arbitration and intended to waive that right. Anlauf does not challenge the district court’s finding that she had knowledge of the arbitration clause. *See Bros. Jurewicz*, 296 N.W.2d at 429 (“[A]s a matter of law, absent fraud or concealment, a party should be deemed to have knowledge of the terms of agreements that [they have] executed.”). Rather, Anlauf challenges the district court’s finding that she *intended* to waive her right to arbitration.

Intent may be inferred from the facts and circumstances of a case. *Gere*, 937 N.W.2d at 177 (citing *Anderson v. Twin City Rapid Transit Co.*, 84 N.W.2d 593, 603 (Minn. 1957)). The supreme court has held that a party may show intent to waive their right to arbitration by waiting to move to compel arbitration until after the dispute has been litigated in the courts. *E.g.*, *Bros. Jurewicz*, 296 N.W.2d at 428 (finding that a party waived its right to

arbitration when it filed an answer on the merits and partook in the litigation for almost one year without asserting its right to arbitration). In *Anderson*, the supreme court decided that, even if the parties were bound by an arbitration clause, the parties repudiated the arbitration clause when the plaintiffs commenced a lawsuit, the defendants filed an answer, and neither demanded arbitration. 84 N.W.2d at 602.

Anlauf asserts that the district court's finding that she did not intend to arbitrate the dispute is erroneous because the following portions of the record support her intent to arbitrate: (1) her July 21, 2024 email to an arbitrator about arbitration costs; (2) a discussion during the January 2025 hearing about Anlauf contacting an arbitration association about costs of arbitration; and (3) Anlauf's response to respondents' interrogatories in which she stated that she believed that the case should be sent to arbitration.² But these portions of the record do not contradict the district court's finding that Anlauf "made several filings prior to her . . . motion to compel, [and] absent among them [was] any assertion of the right to compel arbitration" because none of the documents or information discussed by Anlauf were provided to respondents or the district court until Anlauf filed her motion to compel.

Anlauf also asserts that, according to Minnesota Statutes section 572B.07(d) (2024), she needed to initiate a lawsuit prior to moving to compel arbitration and that she moved for arbitration as promptly as she could. But section 572B.07(d) states: "If a proceeding

² Anlauf also cites to an update that she sent to OLPR in July 2024, stating that Gunther failed to refer this case to arbitration and his malpractice carrier refused to do the same. We do not consider this document because it post-dates the district court's decision and therefore was not available to or considered by the district court.

involving a claim referable to arbitration under an alleged agreement to arbitrate *is pending in court*, a motion under this section must be filed in that court. *Otherwise, a motion under this section may be filed in any court* as required by [the applicable statute governing venue].” (Emphasis added.) Nothing in the statute required Anlauf to initiate her malpractice action in the district court, to delay mentioning her desire to arbitrate, or to refrain from bringing a motion to compel arbitration.

Finally, Anlauf asserts that her case is distinguishable from other cases in which appellate courts have found waiver because, comparatively, her case had not progressed as far as those cases. *E.g., Bros. Jurewicz*, 296 N.W.2d at 428 (seeking arbitration about one year after initiating lawsuit); *Anderson*, 84 N.W.2d at 601 (seeking arbitration after a party moved for summary judgment). But, under a clear-error standard of review, so long as the record reasonably supports the district court’s finding, we will not reverse, even if the record could also support the opposite finding. *Kenney*, 963 N.W.2d at 223. Here, the district court found that Anlauf’s failure to mention or assert her right to arbitration in any of her district court filings over the course of five months demonstrated an intent to waive the right to arbitration. For the reasons discussed above, that finding is supported by the record. Accordingly, we conclude that the district court’s determination that Anlauf waived her right was not clearly erroneous.

Prejudice

Turning to the second element of waiver, a variety of factors may support a finding of prejudice. “Prejudice can include additional expense and delay.” *Gere*, 937 N.W.2d at 179. And while the passage of time alone is not sufficient to show prejudice, *Fedie*, 631

N.W.2d at 821, we have held that a lengthy delay prior to pursuing arbitration may cause prejudice, especially where compelling arbitration “would impede timely resolution of the controversy,” *W. St. Paul Fed’n of Tchrs. v. Indep. Sch. Dist. No. 197*, 713 N.W.2d 366, 377 (Minn. App. 2006) (upholding finding of prejudice where argument to compel arbitration was raised in posttrial motion for amended findings); *see also Bros. Jurewicz*, 296 N.W.2d at 429 n.8 (determining that compelling arbitration “would clearly be prejudicial” because the party opposing arbitration “would have undergone the expense and delay of 18 months of litigation only to have the additional burden of having to resolve the dispute in California”). In *Gere*, we upheld a finding of prejudice where the party opposing arbitration had expended resources in litigation—specifically, by filing a 25-page memorandum opposing a motion to dismiss, participating in oral argument against the motion, and preparing and serving discovery requests—and where compelling arbitration would cause the party opposing arbitration to “reargu[e] issues” by requiring it “to litigate some of the same legal issues already decided.” 937 N.W.2d at 179.

Here, the district court found prejudice because “strategies and defenses” were learned as a result of respondents’ participation in the lawsuit. Like in *Gere*, respondents expended resources in litigation when they filed a ten-page answer, amended the answer to include another party, completed a civil cover sheet, expressed their intent to oppose Anlauf’s waiver of the expert affidavit requirement, and sent Anlauf discovery requests, all of which were completed before Anlauf moved to compel arbitration. Additionally, the parties experienced a five-month delay in reaching a resolution by participating in the litigation. And, based on the parties’ arguments on appeal, compelling arbitration would

likely create a dispute about whether V&G could be compelled to arbitrate, which would further lengthen proceedings and cause additional expense. *Cf. Bros. Jurewicz*, 296 N.W.2d at 429 n.8 (considering as part of prejudice analysis “additional burden[s]” if arbitration had been compelled). On this record, we conclude that the district court’s finding of prejudice was not clearly erroneous.

In sum, because the district court did not clearly err in finding that Anlauf intended to waive her right to arbitration and that respondents would be prejudiced if the case were sent to arbitration, the district court did not clearly err in finding that Anlauf waived her right to arbitration. As a result, we affirm the district court’s denial of Anlauf’s motion to compel arbitration.

Affirmed.