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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0552,
A25-1164**

In re the Estate of Jacob A Alderink, Deceased.

**Filed March 30, 2026
Affirmed
Cochran, Judge**

Anoka County District Court
File No. 02-PR-19-609

John C. Lillie, III, Lillie, Glodosky, Long & Anderson, PLLC, Forest Lake, Minnesota (for appellant Donna Wickstrom)

Mark V. Steffenson, Henningson & Snoxell, Ltd., Maple Grove, Minnesota (for respondent Brenda Shaw)

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In these consolidated appeals arising out of a disputed probate matter, appellant challenges decisions of the district court regarding the award of attorney fees and costs. Appellant argues that the district court abused its discretion by awarding respondent attorney fees pursuant to the parties' partial settlement agreement and further abused its

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

discretion by denying her motion for attorney fees pursuant to Minnesota Statutes section 524.3-720 (2024). Because the district court did not abuse its discretion, we affirm the award of attorney fees to respondent and the denial of attorney fees to appellant.

FACTS

Appellant Donna Wickstrom and respondent Brenda Shaw are sisters. Their father, Jacob Alderink, passed away in September 2019. While he was alive, Alderink signed two wills: the first will was signed December 1, 2015 (2015 will) and the second was signed July 18, 2019 (2019 will). The 2015 will named Shaw as his personal representative. The 2019 will named Ivan Alderink, his son, and Wickstrom as personal representatives. When Alderink signed the 2019 will, he was a resident in the memory care unit of a senior living facility. The 2019 will was drafted by Wickstrom's attorney at her request.

The distributions under the 2019 will were similar to those under the 2015 will except that the 2019 will did not include distributions to Alderink's grandchildren or certain charities that were provided for in the 2015 will. Under the 2019 will, all distributions went to Alderink's children.

Following Alderink's death, Shaw filed a petition for formal probate of the 2015 will. In the petition, Shaw stated that the 2015 will is Alderink's last will. She further stated that "[a] document purporting to be 'The Last Will of Jacob A. Alderink' dated July 18, 2019, is invalid as I believe it was executed while [Alderink] was incompetent and under duress."

Wickstrom filed an objection to the probate of the 2015 will and a counter petition for formal probate of the 2019 will. In her petition, Wickstrom stated that the 2015 will

was revoked by the 2019 will. Wickstrom also opposed the appointment of Shaw as a personal representative, alleging that “there have been many large withdrawals from [Alderink’s] accounts by [Shaw].” Shaw had power of attorney for Alderink until 2019, when Alderink signed the 2019 will and gave Wickstrom power of attorney.

The probate matter of Alderink’s estate proceeded to discovery, and mediation was ordered. Under the district court’s amended scheduling order, discovery closed on July 15, 2020. During the discovery period, the parties took depositions, made requests for documents, and served interrogatories.

On August 18, 2020, shortly before the scheduled start of trial, the parties entered a Partial Settlement Agreement (PSA). The PSA nominates a third party to act as the personal representative of Alderink’s estate. The PSA also includes provisions governing the distribution of the estate’s assets and specifies that the PSA “resolve[s] the differences between the [w]ills and therefore any contest about which will controls is concluded and resolved.” Relevant to this appeal, paragraph 6 of the PSA also provides “[t]he remaining issues are any investigation into the assets of Jacob Alderink and the payment of [e]state expenses and the distribution of the remainder in equal shares to [Alderink’s children].”

Paragraph 3 of the PSA governs that investigation and the award of associated attorney fees and costs. It provides, in relevant part, that:

Wickstrom or Ivan Alderink may raise questions regarding the actions taken by [Shaw] in handling the assets of Jacob A. Alderink, . . . for the period during which [Shaw] was appointed as Power of Attorney for Jacob Alderink through the date of death of Jacob Alderink. Any such issues will be raised and diligently pursued, and subject to any court orders that may be entered in this action.

Paragraph 3 further provides, to the extent that any such “claims are found substantiated by the [district court],” Shaw is responsible for the expenses of such an “investigation, including reasonable attorneys’ fees and costs.” But, “[t]o the extent that such claims are found to be not substantiated by the [district c]ourt, . . . the reasonable attorney’s fees and costs incurred by [Shaw] relating to her defense to such claims, will be paid by Ivan [Alderink] and [Wickstrom].”

After the parties entered into the PSA, Wickstrom pursued such an investigation and retained a forensic accountant, Value Consulting Group, to review Alderink’s financial accounts. Ivan Alderink did not participate in the investigation. In June 2021, Value Consulting Group produced a preliminary report. The report recommended seeking additional documentation of transactions in Alderink’s accounts, but the report reached no conclusions about any potentially improper withdrawal of funds from Alderink’s account by Shaw.

In July 2022, over a year after receiving the report and approximately two years after the close of discovery, Wickstrom petitioned the district court to reopen discovery to obtain “additional discovery, including subpoenas and [an] additional deposition of” Shaw. Shaw opposed the motion, emphasizing that Wickstrom had already deposed Shaw and had made substantial discovery requests. Shaw also objected on the grounds that Wickstrom “had an obligation to diligently pursue any claims” under the terms of the PSA but failed to do so.

Following a contested hearing, the district court denied Wickstrom’s motion to reopen discovery. The district court concluded that Wickstrom failed to meet her burden to show good cause to reopen discovery and failed to act with due diligence. Specifically, the court found that “[t]he testimony and evidence offered did not show that any missing financial records were likely to show financial impropriety.” The court further found that “Wickstrom knew of the purported missing financial records at least by June 29, 2021 (the date of the preliminary report) and waited almost a year to bring this request to extend discovery (two years after close of discovery).” And “[n]o explanation was provided for this delay in requesting an extension after [Wickstrom] knew of the claimed missing records identified by the preliminary report.”

In November 2024, Shaw filed a motion for attorney fees pursuant to the PSA. Shaw requested that the district court order Wickstrom to pay Shaw’s attorney fees that had been incurred since entering into the PSA. Shaw argued that Wickstrom was liable for Shaw’s fees under paragraph 3 of the PSA because Wickstrom “asserted baseless allegations against [Shaw] nearly five years ago, then categorically failed to substantiate her claims.” Shaw also argued that Wickstrom failed to diligently pursue her claims as required by the PSA. Wickstrom opposed the motion, arguing that Shaw was not entitled to attorney fees under the PSA because there had not been “a final contested hearing on the merits” of Wickstrom’s claims and consequently the district court had not made a finding that Wickstrom’s claims were “not substantiated”—a precondition to an award of attorney fees under paragraph 3 of the PSA. Wickstrom also argued that Shaw’s request included inappropriate fees.

Following a hearing, the district court granted Shaw's motion for \$44,819.04 in attorney fees and costs and ordered that the requested attorney fees and costs be paid out of Wickstrom's distributive share of Alderink's estate. In a written order, dated February 5, 2025, the district court found that Wickstrom "has failed to diligently pursue any allegations against [Shaw]." The district court further found that Wickstrom "has failed to substantiate any claim against [Shaw], and as such is liable for [Shaw's] reasonable attorneys' fees and costs." Wickstrom filed a notice of appeal from this order.

Prior to filing the appeal, Wickstrom moved the district court for an award of attorney fees and costs from Shaw. Wickstrom sought attorney fees pursuant to section 524.3-720, rather than the PSA, arguing that she was entitled to statutory attorney fees because her actions challenging Shaw's conduct and the 2015 will were "for the benefit of the estate." Shortly thereafter, Shaw moved for additional fees pursuant to the PSA, seeking fees incurred in bringing the November 2024 motion for fees.

By an order dated May 20, 2025, the district court granted Shaw's motion and denied Wickstrom's motion. The district court ordered Wickstrom to pay an additional \$6,684.50 in attorney fees and costs. Wickstrom filed a notice of appeal from this order on July 17, 2025, and we consolidated the appeals.

DECISION

Wickstrom raises four arguments on appeal. The first three arguments relate to the district court's decision to grant Shaw's motion for attorney fees and costs pursuant to paragraph 3 of the PSA. The fourth argument relates to the district court's decision to deny Wickstrom's motion for attorney fees pursuant to section 524.3-720.

“We review the district court’s award of attorney fees or costs for abuse of discretion.” *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 711 (Minn. App. 2007), *rev. denied* (Minn. Mar. 18, 2008). “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.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted). We consider each argument and discern no abuse of discretion by the district court.

I. The district court’s award of attorney fees pursuant to paragraph 3 of the PSA is consistent with the plain language of the PSA.

The district court awarded attorney fees and costs to Shaw pursuant to paragraph 3 of the PSA. Wickstrom challenges the awards made in both the February and April 2025 orders on the same basis, arguing the awards are not consistent with the language of paragraph 3 of the PSA.

Paragraph 3 of the PSA provides in relevant part:

Donna Wickstrom or Ivan Alderink may raise questions regarding the actions taken by Brenda Shaw in handling the assets of Jacob A. Alderink, either through the personal representative or by their own continuing investigation, for the period during which Brenda Shaw was appointed as Power of Attorney for Jacob Alderink through the date of death of Jacob Alderink. *Any such issues will be raised and diligently pursued, and subject to any court orders that may be entered in this action.* To the extent Donna or Ivan raise such questions regarding the actions taken by Brenda Shaw handling the assets of Jacob A. Alderink, if the claims are found substantiated by the Court against Brenda, such expenses for the Personal Representative investigation, including reasonable attorneys’ fees and costs to the Personal Representative and the reasonable attorney’s fees [and] costs incurred by Donna or Ivan related to those claims, will be paid by Brenda. *To the*

extent that such claims are found to be not substantiated by the Court, such expenses for the Personal Representative investigation, including reasonable attorney's fees and costs to the Personal Representative and the reasonable attorney's fees and costs incurred by Brenda relating to her defense to such claims, will be paid by Ivan and Donna. Such expenses will first be offset against any individual's distribution from the Estate.

(Emphasis added.)

“The construction and effect of a settlement agreement is governed by the rules of contract construction and presents a question of law, which we review de novo.” *Graff v. Robert M. Swendra Agency, Inc.*, 800 N.W.2d 112, 116 (Minn. 2011) (citations omitted). Further, “[w]hen interpreting a contract, we must determine if the language is clear and unambiguous, meaning it has only one reasonable interpretation.” *Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 884 (Minn. 2010). “[W]e assign unambiguous contract language its plain meaning.” *Savelle v. City of Duluth*, 806 N.W.2d 793, 796–97 (Minn. 2011). But, as noted above, we review the ultimate decision to award attorney fees for abuse of discretion. *Brickner*, 742 N.W.2d at 711.

Characterizing the PSA's language as “clear” and “unambiguous,” Wickstrom argues the district court erred by awarding Shaw attorney fees and costs pursuant to paragraph 3 of the PSA. Specifically, she contends that Shaw is not entitled to attorney fees and costs under paragraph 3 because the conditions for an award were not met. We are not persuaded.

Under the terms of paragraph 3, Wickstrom is permitted to raise questions and investigate Shaw's alleged financial impropriety, but such claims must be “diligently

pursued.” And, “[t]o the extent that such claims are found to be not substantiated by the [c]ourt,” then Shaw is entitled to her reasonable attorney fees and costs related to the defense of such claims.

Here, the record reflects that Wickstrom alleged in 2019 that Shaw withdrew funds from Alderink’s bank accounts and further alleged that it did “not appear that the withdrawal was [for] any legitimate purpose to meet any existing need for [Alderink].” These allegations are sufficient to constitute “raising claims” under the terms of the PSA. The record also reflects, and the district court found, that Wickstrom did not diligently pursue these claims after entering into the PSA.

The central issue before us is then whether the district court found Wickstrom’s claims were “not substantiated” within the meaning of the PSA thereby entitling Shaw to her attorney fees and costs under paragraph 3. Wickstrom argues that the district court never made a ruling “on the merits” of her claims regarding Shaw’s alleged financial misdealings, and therefore there was no finding that her claim was “not substantiated.” This argument is unavailing.

In its order denying Wickstrom’s motion to reopen discovery, the district court found, in relevant part, that (1) Wickstrom’s forensic accountant, Value Consulting Group, “denied any finding of financial impropriety” by Shaw based on the records it reviewed, and (2) there was no indication that the additional records being sought by Wickstrom would show financial impropriety. Additionally, in its February 2025 order, the district court specifically found that Wickstrom “has failed to substantiate any claim against”

Shaw. Likewise, in its May 2025 order, the district court found that Wickstrom “has failed to substantiate any claim against” Shaw.

At oral argument, Wickstrom argued that the PSA required the district court to make a more detailed ruling on the merits of Wickstrom’s claims of financial impropriety before the claims could be “found to not be substantiated” within the meaning of paragraph 3 of the PSA. No such language exists in the PSA, and Wickstrom effectively asks us to read language into the agreement. We decline her invitation.

In reviewing the language of the PSA, “we review the language of the contract to determine the intent of the parties.” *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). We must construe the agreement “as a whole” with “attempt[s] to harmonize all of its clauses.” *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). As noted above, if “the language is clear and unambiguous, [this court] enforce[s] the agreement of the parties as expressed in the language of the contract.” *Dykes*, 781 N.W.2d at 582 (citations omitted). “Courts may not . . . add provisions upon which the parties have not agreed.” *Knudsen v. Transp. Leasing/Cont., Inc.*, 672 N.W.2d 221, 224 (Minn. App. 2003), *rev. denied* (Minn. Feb. 25, 2004).

Here, the language of the PSA is clear. The terms of the PSA do not require a detailed ruling *on the merits*; paragraph 3 simply requires a finding by the district court that Wickstrom’s claims were “not substantiated.” The district court made that precise finding in both of its February and May 2025 orders awarding attorney fees and costs to Shaw. In both orders, the district court found Wickstrom “has failed to substantiate any claim against” Shaw. These findings are sufficient to support the district court’s award of

attorney fees and costs to Shaw. Accordingly, we reject Wickstrom's argument that the award of attorney fees and costs to Shaw was not consistent with the terms of the PSA.

II. Wickstrom's impossibility argument lacks legal support.

Wickstrom next argues that the district court abused its discretion by awarding attorney fees and costs pursuant to the PSA because the district court's denial of her motion to reopen discovery made it legally "impossible" for her claims to be found "substantiated or unsubstantiated." We are not persuaded.

Under Minnesota law, the doctrine of impossibility can excuse a party's nonperformance of a contractual duty when "due to the existence of a fact or circumstance of which the promisor at the time of the making of the contract neither knew nor had reason to know" renders performance impossible or "impracticable in the sense that performance would cast upon the promisor an excessive or unreasonably burdensome hardship, loss, expense, or injury." *Powers v. Siats*, 70 N.W.2d 344, 348 (Minn. 1955).

Wickstrom has not demonstrated that the district court's denial of her motion to reopen discovery rendered her performance under paragraph 3 of the PSA legally impossible. The record shows that Wickstrom had every reason to know whether she would act diligently in bringing her claims at the time that she entered into the PSA. And she knew when her financial consultant's report was complete. Yet without explanation, she waited over a year after receiving that report before moving to reopen discovery. In other words, it was Wickstrom's own conduct that led to the district court denying her motion to reopen discovery. Wickstrom's nonperformance was not due to the existence of a fact or circumstance of which Wickstrom neither knew nor had reason to know at the

time she entered into the PSA. The district court's denial of her motion to reopen discovery did not render compliance with paragraph 3 legally impossible. We therefore conclude that Wickstrom's impossibility argument fails.

We are not persuaded otherwise by Wickstrom's reliance on the Restatement (Second) of Contracts. Specifically, Wickstrom relies on the "frustration of purpose" language from the Restatement to support her argument. The Restatement (Second) of Contracts states in relevant part:

Where, after a contract is made, a party's principal purpose is substantially frustrated *without his fault* by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary.

Restatement (Second) of Contracts § 265 (Am. L. Inst. 1981) (emphasis added). But as discussed above, to the extent that Wickstrom's principal purpose was frustrated, it was frustrated by her own failure to raise her claims against Shaw in a timely manner. In other words, the doctrine of "frustration of purpose" is inapplicable because Wickstrom's inability to further pursue her claims is her own fault.

The only other legal authority that Wickstrom cites to support her argument is *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 503 (Minn. 1995). Wickstrom contends that this case stands for the proposition that "equitable principles bar a party from capitalizing on a condition's failure where performance was frustrated." But here, Shaw did not frustrate Wickstrom's performance. Rather, Wickstrom's performance was frustrated by her own failure to diligently pursue her claims. Wickstrom's reliance on

Hennepin County is misguided. We therefore conclude that Wickstrom has failed to demonstrate the impossibility doctrine requires reversal of the district court's award of attorney fees and costs to Shaw pursuant to paragraph 3 of the PSA.

III. Section 524.3-720 does not apply to the district court's award of attorney fees and costs to Shaw.

Wickstrom next argues that the district court abused its discretion by awarding attorney fees and costs to Shaw because the district court did not consider whether such an award met the requirements of Minnesota Statutes section 524.3-720. Specifically, she contends that section 524.3-720 requires a showing of a benefit to the estate before fees are awarded and paid from the estate. This argument is unpersuasive because the district court awarded attorney fees and costs to Shaw paid from the estate pursuant to the PSA, not pursuant to section 524.3-720.

Under section 524.3-720, a personal representative who "defends or prosecutes any proceeding in good faith" in estate litigation may recover "necessary expenses and disbursements" from the estate. Minn. Stat. § 524.3-720. Additionally, section 524.3-720 provides that "any interested person" may be awarded reasonable attorney fees when the services of the attorney for the "interested person contribute to the benefit of the estate . . . as distinguished from the personal benefit of such person." *Id.*

While section 524.3-720 allows for an award of attorney fees in these specified circumstances, it does not preclude a district court from making an award of attorney fees pursuant to a settlement agreement entered into by parties to estate litigation. *Id.* Nor does

it require that a district court find that a party's conduct "benefited the estate," as argued by Wickstrom, before such an award can be made pursuant to a settlement agreement. *Id.*

Rather, when a motion for attorney fees is made pursuant to a contract such as a settlement agreement, the terms of the contract itself govern the award. Generally, "[t]he American rule prevents a party from shifting its attorney fees to its adversary without a specific contract or statutory authorization." *Kallok v. Medtronic, Inc.*, 573 N.W.2d 356, 363 (Minn. 1998). But if the parties agree to shift fees by contract, the contract controls; indeed, if authorized by contract, a party need not prevail to be awarded attorney fees. *Oleisky v. Midwest Fed. Sav. & Loan Ass'n of Minneapolis*, 398 N.W.2d 627, 629 (Minn. App. 1986), *rev. denied* (Minn. Feb. 18, 1987). And, as Wickstrom herself notes at length, she "bargain[ed] and negotiate[d]" for the PSA. Consequently, we reject Wickstrom's argument that the district court was required to consider section 524.3-720 in determining whether to award attorney fees to Shaw pursuant to the PSA.

IV. The district court did not abuse its discretion by denying Wickstrom's motion for attorney fees.

Lastly, Wickstrom argues that the district court abused its discretion by denying her motion for attorney fees and costs. This argument is unavailing.

Wickstrom petitioned for attorney fees pursuant to section 524.3-720, not the PSA. As noted above, under section 524.3-720, a personal representative who "defends or prosecutes any proceeding in good faith" in estate litigation may recover "necessary expenses and disbursements" from the estate and an "interested person" may be awarded reasonable attorney fees when the services of the attorney "contribute to the benefit of the

estate . . . as distinguished from the personal benefit of such person.” Minn. Stat. § 524.3-720.

We review the district court’s denial of attorney fees under this statutory provision for an abuse of discretion. *See In re Est. of Torgersen*, 711 N.W.2d 545, 550 (Minn. App. 2006) (reviewing the denial of attorney fees under section 524.3-720 for an abuse of discretion), *rev. denied* (Minn. June 20, 2006). And we have held in the past that “[t]he public policy underlying this statute recognizes that an estate as an entity is benefited when genuine controversies as to the validity or construction of a will are litigated and finally determined.” *Id.* at 555 (quotation omitted). But where an interested person acts not for the benefit of the estate, but for their own benefit, attorney fees are not proper. *See In re Est. & Tr. of Anderson*, 654 N.W.2d 682, 688 (Minn. App. 2002) (affirming the denial of attorney fees to a beneficiary because her legal actions “would have been to her personal benefit as a beneficiary, for which section 524.3-720 does not allow reimbursement”), *rev. denied* (Minn. Feb. 26, 2003).

Wickstrom sought fees under Minnesota Statutes section 524.3-720 on the grounds that the fees “correspond to the legal work necessary to protect [Alderink’s] estate and thus should be paid from the estate.” In support of her motion for attorney fees, Wickstrom argued that she conferred a “benefit to the estate” by coming forward with the 2019 will and challenging the 2015 will. The district court denied Wickstrom’s motion for attorney fees, concluding that the “agreed upon terms of the [PSA] identically follow the [2015 will]” and therefore Wickstrom’s litigation did not benefit the estate.

On appeal, Wickstrom argues that the district court abused its discretion when it determined that Wickstrom's litigation did not benefit the estate. She contends that her accounting investigation, conducted by Value Consulting Group, benefited the estate because it was "intended to identify and recover assets that may have been diverted before death by" Shaw. But the accounting investigation never identified any assets that were improperly diverted. And, as she acknowledges, the district court specifically found that (1) Value Consulting Group did not identify any financial impropriety, and (2) there was no indication that the additional records that Wickstrom sought would show financial impropriety.

Moreover, Wickstrom never explains how the district court abused its discretion in relying on these findings in denying her motion for attorney fees and costs beyond her bare assertion that "[h]ad additional discovery been allowed to proceed . . . any improperly diverted funds could have been restored, thereby increasing the estate's benefit to all heirs." In effect, Wickstrom asks us to set aside the district court's findings in favor of her speculation about what would have happened had she prevailed on her motion to amend the scheduling order. But it is not our role to reweigh the evidence or to speculate about what might have occurred had the district court not denied her motion to amend the scheduling order. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (explaining that appellate courts typically only address issues that were presented to and considered by the district court); *see also In re Est. of Riggle*, 654 N.W.2d 710, 714 (Minn. App. 2002) ("This court does not reweigh the evidence presented to a district court.").

For the reasons set forth above, we conclude that the district court did not abuse its discretion by denying Wickstrom's motion for attorney fees and costs pursuant to section 524.3-720. Nor did the district court abuse its discretion by awarding attorney fees and costs to Shaw pursuant to the PSA.

Affirmed.