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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0715**

Snowman Construction,
Appellant,

vs.

Ceresota Funding II LLC, et al.,
Respondents,

Minnwest Bank,
Respondent.

**Filed March 9, 2026
Affirmed
Wheelock, Judge**

Hennepin County District Court
File No. 27-CV-19-3907

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Considered and decided by Wheelock, Presiding Judge; Schmidt, Judge; and Jesson,
Judge.*

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

NONPRECEDENTIAL OPINION

WHEELLOCK, Judge

Appellant construction company argues that the district court erred by (1) admitting inadmissible hearsay and undisclosed expert testimony that was prejudicial to appellant; (2) failing to sanction respondent building owner for spoliating evidence; (3) making clearly erroneous findings of fact; and (4) awarding damages to respondent building owner that were not justified by the evidence. We affirm.

FACTS

Respondents Ceresota Funding II LLC and Ceresota Funding LLC (collectively, Ceresota) owned a building in downtown Minneapolis. Ceresota's owners decided to convert the building, which is at the heart of the underlying dispute, into a senior-living facility. Ceresota initiated work on the building in 2014 and hired appellant Snowman Construction (Snowman) in September 2015 to perform specific parts of the construction.

Citing incomplete and defective work by Snowman, Ceresota terminated Snowman's contract in 2018. After being terminated, Snowman perfected its mechanic's lien on the property. Snowman then brought a lawsuit against Ceresota for foreclosure on the mechanic's lien, breach of contract, and unjust enrichment. Ceresota brought counterclaims for breach of contract, slander of title, tortious interference with contract, and negligence. The parties eventually tried their claims to the district court, and the court awarded Snowman \$25,981.93 on its mechanic's lien and Ceresota \$385,660.57 on its counterclaim for breach of contract. We derive the following facts from the district court's findings and the record on appeal.

Ceresota and Snowman signed a construction contract that identified the owner of Snowman, Bradley Snow, as the construction manager for the project. The contract stated that Snowman's work would be free from defects and consistent with "good and sound practices within the construction industry." Snowman agreed that it would be responsible for "inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work." The contract also provided that, if Ceresota incurred any costs or expenses on behalf of Snowman, it had "an absolute right to offset such amount against the Contract Sum" by either deducting the amount from what was owed to Snowman or issuing notice to Snowman of a reduction of the contract sum.

Snow signed a General Contractor's Sworn Statement in March 2017 and began holding himself out to others as the general contractor, including placing signs around the project site that said, "General Contractor: Brad Snow," and texting multiple subcontractors to inform them that he was the general contractor. But during construction, concerns arose regarding the quality of Snowman's work, and Ceresota hired The Povolny Group (TPG) to represent Ceresota's interests on the job site. Jim Povolny, president of TPG, noted that Snow was rarely on the job site, did not conduct regular construction meetings, and did not have a construction schedule. In fall 2017, TPG was tasked with coordinating the subcontractors and Snowman to complete the project. Mick Bondurant, a TPG employee, was named the lead project manager.

In November 2017, Bondurant began creating punch lists to identify Snowman's incomplete or defective work. On November 30, 2017, Ceresota gave Snowman a notice of claim due to Snowman's unsatisfactory work and threats to abandon the project; after

the notice of claim, Bondurant continued to send punch lists to Snowman concerning incomplete or defective work. Bondurant struggled to reach Snow and found that Snowman's crews were not responsive to Bondurant's instructions.

Contractors and subcontractors began to perform walk-throughs of the project site. During these walk-throughs, one of Ceresota's hired project managers, Karen Barron, noted that countertops were not fitting in the units, doors were not closing properly, there was poor painting throughout, food bags were shoved into the walls, and buckets were being "used as restrooms" on the site. On other walk-throughs, Bondurant noted that, when he opened wall cavities, he found bottles containing urine inside the walls.

TPG and Bondurant continued to experience setbacks with Snowman, send additional punch lists, and request that Snow be present on site to manage subcontractors. On February 8, 2018, TPG emailed Snow, telling Snow to complete the punch list for three floors by February 16 or Ceresota would have to "complete them for [Snowman]" and Snowman would be back-charged for the cost. Snow responded by requesting an extension to the following Monday and confirming that he would bring in extra crew and complete the requested items. TPG granted the extension.

On February 19, after Snowman spent the weekend working to complete the punch list, Bondurant reviewed Snowman's work. According to Bondurant, the site was "atrocious" and looked unlike any other work site he had seen. He estimated that it would take a minimum of several weeks to remedy the incomplete and defective work Snowman did over the weekend. Bondurant photographed Snowman's work to document the condition of the building. The photographs showed missing caulk on bathroom vanities,

urine-filled bottles left inside framing for the walls and ceilings, missing trim on doors that prevented them from properly closing, and numerous other defects. Two architects whom Ceresota had hired to work on the project, Kenneth Piper and Timothy Van Houten, also walked the property at that time and found that the work Snowman had performed was unacceptable and defective.

On behalf of Ceresota, TPG gave Snowman a written notice of default that day for poor performance and failure to complete its work on the project on time. TPG also notified Snowman that the contract was terminated for cause as to floors two through six of the building. Snowman was allowed to continue working on floors seven and eight; however, on June 5, 2018, after continued problems with performance and workmanship, Ceresota terminated Snowman's contract for cause as to the entire project.

On June 11, 2018, Snowman perfected its mechanic's lien on the property, alleging it was owed \$693,474.78. On August 13, 2018, Snowman perfected another mechanic's lien for \$681,985.65.¹ Snowman then filed suit against Ceresota.

Before trial, Ceresota subpoenaed Bondurant for a deposition in lieu of trial testimony because Bondurant had moved to Washington and there was a chance he would not appear for the trial. On July 8 and 9, 2021, Ceresota deposed Bondurant in Washington. Ceresota's counsel's direct examination of Bondurant took five hours, while Snowman's cross-examination lasted 12 hours. At the end of the second day, Bondurant announced

¹ Snow also created an invoice in May 2018 that stated Ceresota owed Snowman \$597,018.25. A comment on the invoice admitted at trial reads that the amounts "continue to be outstanding as of 7/25/2018."

that he was finished answering questions and left the deposition room. On the record at the deposition, Snowman's counsel reserved the right to issue a second subpoena to Bondurant for additional questioning but never did so.

The district court held a pretrial hearing on Snowman's motion in limine requesting that the court (1) exclude evidence and sanction Ceresota for spoliating evidence,² (2) exclude evidence of Bondurant's handwritten annotations on invoices as inadmissible hearsay,³ and (3) exclude Bondurant's testimony as expert-witness testimony for which Ceresota did not provide proper disclosure. As to the first request, the district court denied it, determining that there was nothing in the record to support Snowman's assertion that Ceresota had "exclusive control and possession" of the evidence when it was lost. As to the second request, the district court granted in part and denied in part Snowman's motion to exclude Bondurant's handwritten notes as hearsay, determining that the underlying invoices were admissible and that Bondurant would be able to use his handwritten notes on the invoices to refresh his recollection if he testified at trial. As to the third request, the

² Snowman asserted that the invoices that Tradesmen International sent to Bondurant that he annotated with his handwriting were lost before Snowman could view them and that Ceresota had engaged in spoliation of this evidence. Tradesmen was a contractor Ceresota hired to fix the portion of Snowman's work that was defective. Tradesmen also performed work on the project that did not involve fixing Snowman's defective work, but on its invoices, Tradesmen did not distinguish between the work it did to correct Snowman's work and the work that was unrelated. Bondurant testified that he made notations on Tradesmen's timecards to track what work Tradesmen was performing related to Snowman's mistakes and what work was unrelated to Snowman. The timecards were used to segregate Tradesmen's bills but were reportedly lost before trial.

³ Bondurant also had made handwritten notes on invoices for Acoustics Associates Inc. (Acoustics), which also made repairs to fix Snowman's defective and incomplete work.

district court ordered that the portions of Bondurant's testimony identified in Snowman's motion were admissible as lay opinion testimony.

The parties appeared for a bench trial that took place over seventeen days. On the last day of trial, the district court again heard arguments regarding the admissibility of Bondurant's handwritten annotations on the invoices. Ceresota argued that the annotations were admissible as nonhearsay prior consistent statements and as exceptions to the rule against hearsay as recorded recollections and business records. The district court agreed with Ceresota "on all three grounds" and admitted the exhibit that included Bondurant's handwritten notes into evidence. The district court stated, "Because this is a bench trial and because counsel have articulated this thoroughly and carefully at three stages during this trial, I believe I am well-versed in what I need to consider."

At the conclusion of trial, the district court issued a 94-page order in which it found for Snowman on the mechanic's lien and found for Ceresota on its counterclaims for breach of contract and negligence, awarding Ceresota damages on the breach-of-contract claim. Snowman's mechanic's lien of \$25,981.93 was offset against Ceresota's judgment for breach of contract for \$385,660.57. Therefore, the district court entered judgment in favor of Ceresota in the amount of \$359,678.64.

Snowman moved for amended findings or a new trial, and after a hearing on the motion, the district court denied it.

Snowman appeals.

DECISION

Snowman argues that the district court (1) erred by admitting Bondurant's testimony at trial because it was inadmissible expert testimony that lacked foundation and contained inadmissible hearsay, (2) abused its discretion by determining that Ceresota did not spoliage evidence used to calculate damages owed to Ceresota, (3) made clearly erroneous factual findings, and (4) abused its discretion by awarding Ceresota damages not justified by the evidence. We address each argument in turn.

I. The district court did not abuse its discretion in its evidentiary rulings admitting Bondurant's testimony at trial.

"We afford the district court broad discretion when ruling on evidentiary matters, and we will not reverse the district court absent an abuse of that discretion." *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). "In the absence of some indication that the trial court exercised its discretion arbitrarily, capriciously, or contrary to legal usage," we are bound by the result. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997). Even if an evidentiary ruling is erroneous, it will not be reversed unless it resulted in prejudice. *Id.* "Appellant bears the burden of demonstrating that an improper evidentiary ruling caused prejudicial error." *Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, Inc.*, 624 N.W.2d 796, 808 (Minn. App. 2001). For Snowman to succeed on its evidentiary claims, it must show that the district court abused its discretion and that it was prejudiced as a result.

Snowman argues that Bondurant's deposition testimony was inadmissible because it was expert testimony and Ceresota never disclosed Bondurant as an expert witness; it

lacked sufficient foundation; Bondurant's handwritten notes on invoices were inadmissible hearsay; and when Bondurant left the deposition "prematurely," he deprived Snowman of a "full and fair opportunity to cross-examine him." As explained below, Snowman's evidentiary arguments fail because they are forfeited, do not show error, do not demonstrate prejudice, or some combination thereof.

A. Bondurant's deposition testimony was admissible as lay opinion testimony and did not prejudice Snowman.

Snowman asserts that Bondurant's testimony was inadmissible expert testimony under Minn. R. Evid. 702 because it required specialized and technical knowledge outside of an ordinary lay person's experience. Snowman specifically argues that Bondurant's testimony regarding the scope of Snowman's work on the project should not have been admitted.

Minnesota Rule of Civil Procedure 26.01(b) requires that a party disclose the identity of any expert at least 90 days before trial commences. A lay witness's testimony is limited to

opinions or inferences which are (a) rationally based on the perception of the witness; (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Minn. R. Evid. 701. Minnesota law recognizes two categories of lay opinion testimony:

First, as a matter of necessity, witnesses may testify in the form of a generalized opinion about common matters they observed such as speed, size, distance, how they felt or how others appeared, intoxication, mental ability and numerous other subjects, if helpful.

The second category involves testimony from a skilled layman. The Federal Advisory Committee Note describes this as testimony, not based on specialized knowledge, but based on “particularized knowledge” developed in day-to-day affairs[.]

Minn. R. Evid. 701 2016 comm. cmt. The determination of whether a lay witness is competent to give opinion evidence “is peculiarly within the province of the [district court], whose ruling will not be reversed unless it is based on an erroneous view of the law or clearly not justified by the evidence.” *Muehlhauser v. Erickson*, 621 N.W.2d 24, 29 (Minn. App. 2000) (quotation omitted).

Bondurant testified that he has worked in the construction industry for 35 years and has been involved in dozens of large construction projects similar to Ceresota’s project. Based on his extensive knowledge of the industry and his direct involvement overseeing the project on a day-to-day basis, the district court did not abuse its discretion in determining that Bondurant had particularized knowledge as a skilled layman and admitting his testimony as lay opinion testimony. *See* Minn. R. Evid. 701 2016 comm. cmt. In his role as the owner’s representative, Bondurant was “personally on the construction site at least six days a week and created [multiple] punch list[s] of quality control issues he observed” and took photographs to document his observations of the work site.⁴ We discern no abuse of discretion in the district court’s determination that Bondurant could testify to his personal knowledge and observations about the project. Snowman challenges the following portions of said testimony.

⁴ The parties presented approximately 430 exhibits at trial, which contained hundreds of photographs of the project site.

1. Scope of Snowman's Work

Snowman asserts that Bondurant's testimony regarding whether Snowman's scope of work included insulation was expert testimony because Bondurant used a wall-assembly schedule to support his reasoning.

While some of the language in the wall-assembly schedule could be seen as requiring specialized knowledge to decipher, the schedule has multiple portions in which "insulation" is clearly outlined in the wall-type description. Bondurant was shown the plans when he began working on the project and was therefore testifying to his personal experience and observations on the project, which was relevant to a disputed fact at trial—the scope of Snowman's work.

There was other evidence to support the assertion that Snowman's scope of work included insulation, including the text Snow sent his subcontractors on January 30, 2017: "I am the general contractor on this project and my scope of work that I am taking care of, demo, framing, insulation, sheet rocking, painting, all trim work, doors, cabinets, railing, acoustic ceilings."

Therefore, Snowman has not established that, even if the district court erred in admitting the challenged evidence at trial, it caused any prejudice. In fact, in the district court's final order, it relied on Snow's text to support its finding that the scope of work included insulation. Thus, the district court did not rely on only Bondurant's testimony regarding the wall-assembly schedule.

2. Sound-Transmission Test

Snowman asserts that Bondurant's testimony about the sound-transmission test is inadmissible as lay opinion evidence because sound-transmission test results and "opining about how a failed one might be fixed requires specialized technical knowledge within the scope of Rule 702." Thus, Snowman argues, because Bondurant was not an expert, he should not have been allowed to testify about the sound-transmission test.

This testimony was based on Bondurant's personal knowledge of the sound-transmission test and the solution Ceresota implemented of adding insulation to a wall to correct the sound-transmission issue. Bondurant references "we" when talking about the steps he and the subcontractors took in fixing the situation, showing that he was present for and involved in the actions about which he testified. This testimony is rationally based on Bondurant's own perception, is helpful for the determination of a disputed fact—the defects in Snowman's work that required fixing by another party, and is not based on scientific, technical, or other specialized knowledge. *See* Minn. R. Evid. 702 (stating that, if "scientific, technical, or other specialized knowledge will assist the trier of fact," an expert may testify in the form of opinion or otherwise).

In addition, Snowman does not explain how the admission of this testimony was prejudicial. The district court does not mention the sound-transmission test failure in any of its findings in its order following trial.

3. Defects in Door Framing

Minnesota courts have concluded that expert testimony is "not required when the conduct complained of can be evaluated adequately by a jury in the absence of expert

testimony.” *SECURA Ins. Co. v. Deere & Co.*, 12 N.W.3d 103, 111 (Minn. App. 2024) (quotation omitted), *rev. denied* (Minn. Dec. 17, 2024). Consequently, “where the acts or omissions complained of are within the general knowledge and experience of lay persons, expert testimony is not necessary to establish a standard of care.” *Atwater Creamery Co. v. W. Nat’l Mut. Ins. Co.*, 366 N.W.2d 271, 279 (Minn. 1985); *see also* *Tousignant v. St. Louis County*, 615 N.W.2d 53, 58 (Minn. 2000) (recognizing that “when the acts or omissions complained of are within the general knowledge and experience of lay persons, expert testimony is not necessary to establish a standard of care, even in cases of alleged medical malpractice” (quotation omitted)).

The district court’s order refers to a photograph admitted into evidence that shows a door “out of square” that does not align with the framing. The door tilts to the left and is not flush with the wall when pulled closed. The top of the door also does not align with the frame that was cut for the door. This photograph was one “out of hundreds” admitted at trial to show Snowman’s defective work.⁵ It is within the general knowledge and experience of a lay person to be able to identify when a door is not properly in its frame or will not close properly.

Snowman has also failed to explain how this testimony was prejudicial. Other evidence supports the district court’s finding that the framing Snowman performed was defective, not merely Bondurant’s testimony. The district court relied on the testimony of

⁵ The punch list created by Bondurant and sent to Snow also lists the defective and incomplete work Snowman was expected to fix, which included many tasks and multiple issues with doors in units throughout the building.

Piper and Van Houten, architects who reviewed the work done by Snowman and submitted a report of defective and incomplete work that required fixing that included “[w]alls, door openings and doors out of level/plumb,” “[d]amage to several doors,” “[u]nit door trim not flush and straight,” and many other issues related to door installation. The district court found that Piper and Van Houten both testified credibly about their walk-through of the project and that the defective work outlined in their report matched what they observed on site that day and was caused by Snowman.⁶

Snowman fails to explain how the admission of Bondurant’s testimony was prejudicial when the district court also relied on the credible testimony of other witnesses to support its finding that the framing was defective.

4. Failure to Follow Plans or Coordinate Work

Snowman also challenges Bondurant’s testimony that Snowman failed to follow plans, including by building bathroom walls that were not in accordance with the plan, because a lay witness could not recognize complex building standards.

In his testimony, Bondurant explained that the gap was too large between the toilet and the wall Snowman constructed and that, since the project is an assisted-living facility, there are grab bars that need to be accessed in the bathrooms. However, Bondurant’s

⁶ Snowman failed to request trial transcripts for multiple days of trial testimony, including testimony on which the district court relied in its order, such as Piper’s testimony on January 4. An appellant has the burden to provide an adequate record. *Noltimier v. Noltimier*, 157 N.W.2d 530, 531 (Minn. 1968). When an appellant fails to provide a transcript, our review is limited to whether the district court’s conclusions of law are supported by its findings. *Duluth Herald & News Tribune v. Plymouth Optical Co.*, 176 N.W.2d 552, 555 (Minn. 1970).

testimony states that it was clear after the toilet was set that there was a “large gap” between the toilet and the wall that would be noticed because “[e]verybody is used to the very common distance that a toilet sits from the wall.” The issue itself is based on the fact that a lay person would notice the distance and that it would be unsafe for elderly occupants because the installation would not allow for safety measures like grab bars if left as it was.

This testimony is based on Bondurant’s personal perception as a manager of the site, not on specialized knowledge, and it is relevant as to whether Snowman’s work was defective. We therefore conclude that the district court did not abuse its discretion in admitting it as lay opinion testimony.

Snowman has also failed to show how this particular testimony was prejudicial. The district court stated in its order that the findings were supported by multiple credible witnesses at trial⁷ and the “significant volume of photographic evidence depicting defects.” The district court did not rely primarily on Bondurant’s testimony to find that Snowman’s work was defective and that Snowman did not follow plans for the project. Therefore, Snowman has not established that the admission of Bondurant’s testimony, even if it was undisclosed expert testimony, was prejudicial.

B. Ceresota laid proper foundation for Bondurant’s testimony.

Snowman asserts that Ceresota failed to lay proper foundation for Bondurant’s testimony regarding the scope of Snowman’s work, the results of the sound-transmission

⁷ Van Houten testified to the construction defects found in the bathrooms and stated that a wall “had to be opened up so blocking could be installed for the grab bars” in 20-25% of the units to fix that problem with Snowman’s work.

test, and the manner in which Snowman's work failed to comply with the construction plans.

"Evidentiary rulings concerning materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence are within the [district] court's sound discretion and will only be reversed when that discretion has been clearly abused." *Johnson v. Washington County*, 518 N.W.2d 594, 601 (Minn. 1994) (quotation omitted). "[A] decision on sufficiency of foundation is within the discretion of the [district] court." *McKay's Fam. Dodge v. Hardrives, Inc.*, 480 N.W.2d 141, 147 (Minn. App. 1992) (quotation omitted), *rev. denied* (Minn. Mar. 26, 1992).

Although Snowman objected to Bondurant's testimony regarding the sound-transmission test as improper rule 702 testimony, it did not object based on a lack of foundation. To preserve an evidentiary issue, a party must "mak[e a] timely objection." *Sauter v. Wasemiller*, 389 N.W.2d 200, 202 (Minn. 1986). "[F]ailure to object properly at trial prevents a party from raising an objection for the first time . . . on appeal." *Park Hill Apartments v. Anderson*, 409 N.W.2d 924, 925 (Minn. App. 1987); *see also Poppler v. Wright Hennepin Coop. Elec. Ass'n*, 834 N.W.2d 527, 541 (Minn. App. 2013) (concluding evidentiary argument was not preserved where appellant objected on a different ground at trial than the ground raised on appeal), *aff'd on other grounds*, 845 N.W.2d 168 (Minn. 2014). Therefore, this argument is forfeited.

Even if we consider Snowman's forfeited argument, however, we have already determined that Bondurant's testimony was lay testimony based on his personal involvement with and observations of the project. As to the scope of Snowman's work and

the insulation, Bondurant stated that his opinion was based on his “discussions with Mr. Snow and his subcontractor,” and as to the sound-transmission test, Bondurant explained that his testimony was based on his firsthand observations of the project.

Snowman also does not assert that this testimony caused it prejudice. Therefore, Snowman’s challenge to Bondurant’s testimony based on insufficient foundation fails.

C. Bondurant’s handwritten notes were not inadmissible hearsay.

Snowman asserts that Bondurant’s handwritten notes on invoices constituted hearsay and that the district court abused its discretion in determining that the notes were admissible under three exceptions to the rule against hearsay, as (1) prior consistent statements pursuant to Minnesota Rule of Evidence 801(d)(1)(b); (2) recorded recollections pursuant to Minnesota Rule of Evidence 803(5); and (3) business records pursuant to Minnesota Rule of Evidence 803(6). Bondurant’s handwritten notes were made on invoices from subcontractors to designate which work was related to correcting Snowman’s defective work and which was not. Snowman asserts that Bondurant’s notes present “three levels” of hearsay because they were created by, first, a foreman giving information to Bondurant, second, Bondurant writing the information on a whiteboard, and third, Bondurant using the whiteboard to note the numbers on the invoices.

Hearsay is an out-of-court statement offered for the truth of the matter asserted. Minn. R. Evid. 801. Hearsay is inadmissible unless it falls within one of the exceptions to the rule against hearsay. Minn. R. Evid. 802. Determinations regarding hearsay evidence are largely within the discretion of the trial court. *Hase v. Am. Guar. & Liab. Ins. Co.*, 251 N.W.2d 638, 641 (Minn. 1977). “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. Woosley*, 975 N.W.2d 502, 506 (Minn. 2022). “A defendant claiming error in the district court’s reception of evidence has the burden of showing both the error and the prejudice resulting from the error.” *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009) (quotation omitted). The Minnesota Supreme Court has noted that there is a distinction “between a jury trial and a bench trial” in that the risk of unfair prejudice, when “taking into account [a] district court judge’s experience and familiarity with the operation of the rules of evidence,” is lessened in a bench trial. *State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009).

As to the assertion that these records contain multiple levels of hearsay, we have reasoned in the context of the business-records exception to hearsay that “many business records necessarily include information that the person preparing the record may have obtained from multiple sources” and it does not render them inadmissible. *Walker v. Walker*, No. A20-0675, 2021 WL 955947, at *9 (Minn. App. Mar. 15, 2021), *rev. denied* (Minn. May 26, 2021).⁸ And “[b]ills and summary listings may be acceptable evidence [under the business-records exception] even without the inclusion of underlying support.” *Theissen-Nonnemacher, Inc. v. Dutt*, 393 N.W.2d 397, 400 (Minn. App. 1986) (holding that a contractor’s monthly bills for labor and materials were properly admitted under the

⁸ Nonprecedential opinions are not binding authority but can be cited for their persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).

business-records exception). To qualify under the business-records exception to the hearsay rule, the document must have been

- (1) made by a person with personal knowledge of the matters recorded and a business duty to report accurately or from information transmitted by a person with such knowledge,
- (2) made at or near the time of the recorded event, (3) kept in the course of a regularly conducted business activity, and
- (4) made as part of the regular practice of that business activity.

In re Child of Simon, 662 N.W.2d 155, 160 (Minn. App. 2003) (explaining that Minn. R. Evid. 803(6) encompasses these requirements); *see also Nat'l Tea Co. v. Tyler Refrigeration Co.*, 339 N.W.2d 59, 61 (Minn. 1983).

In *Walker*, the district court admitted handwritten bills, written on notebook paper, into evidence. 2021 WL 955947, at *3. The appellant argued that the handwritten bills were inadmissible hearsay; however, the district court ruled that they were admissible under the business-records exception to the hearsay rule. *Id.* at *5. On appeal, we affirmed, concluding that the handwritten notes were admissible under the business-records exception to the hearsay rule. *Id.* at *8. We concluded that the requirements for the business-records exception were satisfied and observed that the language of Minn. R. Evid. 803(6) says that it applies to records “in any form” and to business “of every kind.” *Id.* at *9 (quotations omitted). The respondent testified at trial as to how he created the bills, that he had personal knowledge of the information in the bills because he had prepared them, that they were created in the course of his regularly conducted business activity, and that writing up the bills was a regular business practice. *Id.*

Here, the invoice notes were created by Bondurant, who had personal knowledge of the project from serving as a project manager and being onsite daily, and the notes reflected information communicated to him in his project-manager role by others working on the project. Bondurant wrote the notes on the invoices “within a day or two of receiving the invoices,” and they were part of his accounting work and billing practice during the construction project. And adding the handwritten notes to the invoices was a regular practice of Bondurant’s throughout the project for work related to the repair of Snowman’s defective work from December 2017 to April 2018. Thus, each of the rule 803(6) requirements was met, and we conclude that the district court did not err in admitting the notes as evidence under the business-records exception.

We further observe that Snowman cross-examined Bondurant for 12 hours during his deposition and thus had ample opportunity to question Bondurant about the handwritten notes. And TPG owner Povolny testified at trial as to the trustworthiness of the handwritten notes that Bondurant and he made on the invoices that outlined back charges for the project. Povolny testified that the notes, which included his own handwritten annotations, were kept in the ordinary course of Povolny’s regularly conducted business activity and were also used for accounting purposes. Therefore, the district court did not err in admitting the notes into evidence.⁹

⁹ Because we conclude that the notes were admissible under the business-records exception, we do not reach the district court’s determinations that the notes were admissible as prior consistent statements or recorded recollections.

Finally, Snowman argues that the notes were not properly admitted because they were created in anticipation of litigation, pointing to Bondurant's testimony and claiming that he reviewed contractor invoices and made his notations to identify amounts to include in Ceresota's damages calculation. However, Bondurant's testimony was that he was responsible for ensuring the work was performed in order for the checks to be released and approving payment to different contractors that were fixing Snowman's work. There is nothing in Bondurant's testimony that suggests he was creating invoices or adding handwritten notes to invoices for litigation purposes. *See Nat'l Tea Co.*, 339 N.W.2d at 62 (determining whether a document was prepared for litigation requires that a district court consider when and by whom the report was made and the purpose of the report). Povolny testified consistently that the invoices were created for accounting purposes on the project. Therefore, the district court did not abuse its discretion in admitting Bondurant's handwritten notes into evidence at trial.

D. Bondurant did not prejudice Snowman by terminating his deposition testimony after Snowman cross-examined him for 12 hours.

Snowman asserts that the district court's admission of Bondurant's testimony violated its due-process rights because Bondurant "abruptly and unilaterally terminated his deposition in the middle of his cross-examination" and therefore it was not given a "meaningful opportunity to cross-examine" Bondurant, particularly about invoices for Albers Mechanical, a Ceresota contractor.

Whether a due-process violation has occurred presents a question of constitutional law that we review de novo. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn.

2012). Because Snowman argues that it was prejudiced by the admission of Bondurant's testimony at trial, we review the district court's admission of the testimony and whether it violated Snowman's rights. "We afford the district court broad discretion when ruling on evidentiary matters, and we will not reverse the district court absent an abuse of that discretion." *Doe 136*, 872 N.W.2d at 879. A party is not entitled to a new trial unless an erroneous evidentiary ruling resulted in prejudicial error. *Kroning*, 567 N.W.2d at 46.

Bondurant participated in a two-day deposition that included five hours of direct examination and 12 hours of cross-examination, and when Bondurant ended the deposition, Snowman did not seek relief. Snowman acknowledged that it could have obtained a subpoena to further question Bondurant but did not do so.

Snowman also does not assert that it was prejudiced by Bondurant's testimony about the Albers invoice; nor could it. The district court relied on other evidence to determine damages related to repair work performed by Albers, including testimony from Povolny and Albers's representative and multiple exhibits.

Because Snowman had 12 hours to cross-examine Bondurant and had the ability to subpoena him again and chose not to, and because ample evidence other than Bondurant's testimony supported the district court's findings damages for Albers's repair work, Snowman's argument fails. As we conclude that the district court did not abuse its discretion in admitting Bondurant's testimony at trial, there is no due-process violation.

II. The district court did not abuse its discretion by declining to sanction Ceresota or exclude evidence based on spoliation of evidence.

Snowman asserts that the district court abused its discretion by not excluding evidence related to Tradesmen’s timecards because Ceresota spoliated evidence—the timecards—in its agent’s possession.

Spoliation of evidence is the “failure to preserve property for another’s use as evidence in pending or future litigation.” *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 436 (Minn. 1990). The duty to preserve evidence exists not only after the formal commencement of litigation, but whenever a party knows or should know that litigation is reasonably foreseeable. *Miller v. Lankow*, 801 N.W.2d 120, 128 (Minn. 2011). A court, under its inherent authority, may sanction a party for spoliation—a breach of the duty to preserve evidence once such a duty arises. *See id.* at 118. We review a district court’s decision regarding spoliation sanctions for an abuse of discretion. *Id.* at 119. “For a claim of spoliation to be successful, the moving party must show that the opposing party had exclusive control and possession of the evidence.” *Gray v. Comm’r of Pub. Safety*, 918 N.W.2d 220, 226 (Minn. App. 2018); *see also Willis v. Ind. Harbor Steamship Co.*, 790 N.W.2d 177, 185 (Minn. App. 2010) (holding that physical control over the evidence is necessary for a district court to impose a spoliation sanction), *rev. denied* (Minn. Dec. 22, 2010).

Snowman asserts that Ceresota had the timecards in its possession when Ceresota served its amended initial disclosures; however, the portion of Bondurant’s testimony to which Snowman cites as support for this assertion does not support this claim. Bondurant

was an employee of TPG, not Ceresota, and he testified as to how he made the timecards, not that he provided the timecards to Ceresota. No testimony supports Snowman's contention that Ceresota had exclusive control and possession of the timecards, and Snowman did not offer any other evidence on this issue. Therefore, we discern no abuse of discretion by the district court in not excluding timecard evidence related to damages and not imposing a sanction on Ceresota, and we conclude that a new trial is not warranted.

III. The district court's findings were supported by evidence in the record and were not clearly erroneous.

Snowman challenges many of the factual findings presented in the district court's order. We have reviewed the record to confirm that each of these findings was supported, and we are satisfied that the challenged findings were properly based on evidence in the record, including testimony from multiple witnesses. We thus conclude that the challenged factual findings are not clearly erroneous.

“[W]e review the district court's factual findings for clear error. That is, we examine the record to see if there is reasonable evidence in the record to support the court's findings.” *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (citation and quotation omitted). “[T]he role of an appellate court is not to weigh, reweigh, or inherently reweigh the evidence when applying a clear-error review; that task is best suited to, and therefore is reserved for, the factfinder.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 223 (Minn. 2021). “Instead, it is the duty of an appellate court to fully and fairly consider the evidence, but so far only as is necessary to determine beyond question that it reasonably tends to support the findings of the factfinder.” *Id.* (quotation

omitted). “If there is reasonable evidence to support the trial court’s findings of fact, a reviewing court should not disturb those findings.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). “And when determining whether a finding of fact is clearly erroneous, we view the evidence in the light most favorable to the verdict. To conclude that findings of fact are clearly erroneous we must be left with the definite and firm conviction that a mistake has been made.” *Rasmussen*, 832 N.W.2d at 797 (citation and quotations omitted). Evidentiary “weight and the credibility of the witnesses is usually for the trier of fact to determine, and it is not compelled to believe any witness merely because his testimony is uncontradicted.” *Costello v. Johnson*, 121 N.W.2d 70, 76 (Minn. 1963). Determinations of witness credibility remain “exclusively the province of the factfinder,” even when they are made implicitly. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009).

Our duty is performed when we consider all the evidence, as we have done here, and determine that it reasonably supports the findings. *See Wilson v. Moline*, 47 N.W.2d 865, 870 (Minn. 1951). “[A]n appellate court need not ‘go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court.’” *Kenney*, 963 N.W.2d at 222 (quoting *Meiners v. Kennedy*, 20 N.W.2d 539, 540 (Minn. 1945)); *see also Wilson*, 47 N.W.2d at 870 (stating that the function of an appellate court “does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the trial court’s findings”).

Snowman asserts there is clear error as to several of the district court’s findings, including its findings regarding whether Snow presented himself as the general contractor;

the accuracy of the district court's accounting of damages; whether Snowman was entitled to ten percent overhead and profit; proper termination of the contract; and the scope of Snowman's work. But the findings Snowman deems erroneous were supported by the testimony of multiple witnesses and exhibits admitted at trial. Snowman's argument that the district court should have made different findings is not persuasive because, "[w]hen 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." *Kenney*, 963 N.W.2d at 223 (quotation omitted). And, as previously stated, this court defers to the district court's findings because the district court, as the fact-finder, is in the best position to assess witness credibility. *Pechovnik*, 765 N.W.2d at 99.

After considering the evidence before the district court, we conclude that the record contains ample evidence to support all of the findings challenged on appeal. Many of the findings that Snowman deems erroneous are supported by testimony from witnesses with personal knowledge of the construction project and photographs and documents that were admitted at trial. After examining the record, we are not left with a "definite and firm conviction that a mistake has been made," *Rasmussen*, 832 N.W.2d at 797 (quotations omitted), and thus, we conclude that the district court's findings are not clearly erroneous.

IV. The damages were justified by the evidence.

Snowman argues on appeal that the district court's decision should be reversed because the award of damages to Ceresota was not justified by the evidence. Snowman asserts that Ceresota relied on Bondurant's handwritten annotations to prove damages,

those notes were inadmissible hearsay, and therefore Ceresota did not sufficiently prove damages because Bondurant's testimony should have been inadmissible.

"The district court has broad discretion in determining damages and will not be reversed except for a clear abuse of discretion." *W. St. Paul Fed'n of Tchrs. v. Indep. Sch. Dist. No. 197*, 713 N.W.2d 366, 378 (Minn. App. 2006); *see also Reiling v. City of Eagan*, 664 N.W.2d 403, 407 (Minn. App. 2003). We "will not set aside a damage award unless it is 'manifestly and palpably contrary to the evidence.'" *W. St. Paul Fed'n of Tchrs.*, 713 N.W.2d at 378 (quoting *Levienn v. Metro. Transit Comm'n*, 297 N.W.2d 272, 273 (Minn. 1980)).

As we have explained, the district court did not abuse its discretion in determining that Bondurant's testimony was not inadmissible hearsay; thus, that testimony was properly before the district court pursuant to the business-records exception to hearsay. In addition, the calculation of damages from the district court was based on witness testimony from several witnesses, not just Bondurant's testimony. In its principal brief, Snowman refers to the district court's finding that cites testimony from seven witnesses supporting the amount Ceresota paid to fix Snowman's defective work. The damages award here is not manifestly and palpably contrary to the evidence. Therefore, Snowman has failed to show that the findings underlying the damages award were clearly erroneous or that the district court abused its discretion in determining damages.

Affirmed.