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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1133**

Michael Fosness, et al.,
Respondents,

vs.

Jennifer Chmielewski,
Appellant.

**Filed April 6, 2026
Affirmed
Smith, Tracy M., Judge**

Carlton County District Court
File No. 09-CV-21-2263

Erik F. Hansen, Kiley L. Eichelberger, Dan R. Roach, Mariah Glinski, Burns & Hansen,
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Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Following a court trial and subsequent motion practice, the district court filed amended findings of fact, conclusions of law, and an order and entered judgment in favor of respondents on their claim for specific performance of a property-purchase agreement with appellant. Appellant argues that the district court erred in (1) determining that the

purchase of the property was governed by a 2017 oral agreement rather than a 2020 written document, (2) determining that the 2017 oral agreement was enforceable based on the part-performance exception to the statute of frauds, (3) concluding that the agreement was not rendered ineffective by Minnesota Statutes section 519.02 (2024), (4) ordering specific performance of the 2017 oral agreement, and (5) determining the remaining amount of money that the respondents must pay appellant to complete the sale. We affirm.

FACTS

This dispute arises out of an agreement between two cousins, appellant Jennifer Chmielewski and respondent Michael Fosness, and their respective spouses, David Chmielewski (now deceased) and respondent Deanna Fosness, regarding the purchase of real property.¹ The dispute was tried to the district court, and the following facts are drawn from the district court's findings of fact and the record evidence.

Chmielewski resides on property on County Road 4 in Carlton. Her property's eastern boundary is shared with two contiguous parcels. The two parcels are separated from each other by a boundary running east to west; thus, one parcel lies to the north of the other. The northern parcel, which contains a residence, has a physical address of 1980 County Road 4, Carlton, MN 55718, and is about 23.38 acres in size (the 1980 Property). The southern parcel is largely vacant and has no physical address; it includes lakeshore on its southern edge and is about 24.54 acres in size (the Bear Lake Property).

¹ We refer to Ms. Chmielewski as "Chmielewski" in this opinion. We refer to her late husband as "Mr. Chmielewski." We refer to the Fosnesses as "Mr. Fosness" or "Ms. Fosness."

At trial, Mr. Fosness testified that, over the course of two evenings in 2017, he and the Chmielewskis came to an oral agreement (the 2017 Oral Agreement) regarding the purchase of the 1980 Property and the Bear Lake Property. At that time, the 1980 Property and the Bear Lake Property were owned by a third party. The oral agreement was that the Chmielewskis would exercise their outstanding option with the third party to buy the two properties, and Mr. Fosness would pay all the initial costs of purchasing the properties through a joint checking account established with the Chmielewskis. Then, it was agreed, Chmielewski would draw a new property line down the middle of the two properties, running from north to south, which would split the properties in half and create two new properties. The Chmielewskis would own the newly created western property, which would continue to share a boundary with their property. Mr. Fosness would pay \$165,000, reduced by his payment of costs and of the downpayment, to own the newly created eastern property.

In March 2018, the Chmielewskis exercised their option to purchase the 1980 Property and the Bear Lake Property. The purchase price was \$225,900. Funds for the downpayment and closing costs, totaling \$40,860.05, were provided by Mr. Fosness through a joint bank account opened in 2018. The purchase of both properties was additionally financed by a single mortgage. The purchase agreement and the closing disclosure collectively referred to the two parcels by the street address 1980 County Road 4, Carlton, MN.

For a period of time following the purchase of the properties, the previous owner remained on the properties based on a lease. Thereafter, the Fosnesses moved into the home

on the 1980 Property and began making and paying for a variety of improvements. Mr. Fosness also made every payment on the properties' collective mortgage through trial.

Mr. Fosness testified that he clarified multiple times with the Chmielewskis that the parcel he would receive would include the southern lakeshore, stating that he otherwise would not have agreed to buy it. He testified that the Chmielewskis confirmed that his parcel would include the lakeshore. Two additional witnesses at trial corroborated that the land was to be split between Mr. Fosness and the Chmielewskis. One of them testified to observing Mr. Chmielewski draw the proposed property line on a pizza box consistent with Mr. Fosness's understanding of the agreement.

On January 27, 2020, at the insistence of Mr. Fosness, Mr. Chmielewski drafted a document titled "Land Agreement" (the 2020 Land Agreement). The entire document consists of the following (in addition to signatures by all four parties):

Land Agreement

Dated 01-27-20

Agreement between buyers, Michael and Deanna Fosness and sellers Jennifer and David Chmielewski. Sale of 20 acres and the house and buildings (property) located at 1980 County Road 4 in County of Carlton, Blackhoof Township, Minnesota.

Sale Price is the current balance of existing mortgage as of today's date. Mortgage payments will be made by buyers for the property through a joint bank account currently held at Members Cooperative Credit Union.

Any changes to this agreement must be agreed upon by both buyers and sellers.

Mr. Fosness testified that the 2020 Land Agreement was just meant to “put something on paper” quick and “without exact numbers” before the Chmielewskis left the state for a trip.

Despite several requests by Mr. Fosness, the Chmielewskis never redrew the property lines. Mr. Chmielewski passed away in September 2021. In December 2021, the Fosnesses sued, demanding specific performance of the 2017 Oral Agreement. The matter was tried to the district court on two days in June 2023. In September 2023, the district court filed an order granting the Fosnesses’ claim for specific performance of the 2017 Oral Agreement. Chmielewski filed a motion for a new trial and to stay entry of judgment, and the district court ordered a new trial solely on the amount of damages. A one-day bench trial was held in August 2024. In June 2025, the district court filed its amended findings of fact, conclusions of law, and order for judgment. The district court maintained its previous order for specific performance, requiring the parties to obtain a plat drawing splitting the properties in half along the north-south axis and to complete any necessary paperwork to convey title of the eastern portion to the Fosnesses. The district court also ordered the Fosnesses to pay \$32,351.53 for their interest in the new eastern portion of the properties.

This appeal follows.

DECISION

We begin by addressing Chmielewski’s challenge to (1) the district court’s determination that the 2017 Oral Agreement is the operative contract between the parties. Then, we turn to Chmielewski’s arguments that the district court erred by (2) applying the part-performance exception to the statute of frauds, (3) not invalidating the contract under section 519.02, (4) ordering specific performance of the contract, and (5) ordering the

Fosnesses to pay Chmielewski only \$32,351.53, rather than a higher amount that she argues is warranted.

I. The district court did not err by determining that the 2017 Oral Agreement is the operative contract.

Chmielewski does not dispute that the parties had a contract for the sale of property to the Fosnesses. Instead, she disputes what the contract was. Based on the evidence and testimony presented at trial, the district court concluded that the 2017 Oral Agreement was the operative contract.

The existence and terms of a contract are questions of fact to be determined by the district court. *Bergstedt, Wahlberg, Berquist Assocs., Inc. v. Rothchild*, 225 N.W.2d 261, 263 (Minn. 1975). Findings of fact are reviewed for clear error. Minn. R. Civ. P. 52.01. “Findings are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). In performing their review, appellate courts do not reconcile conflicting evidence or reweigh the evidence. *Id.* at 221-22. Findings of fact are clearly erroneous where the appellate court is “left with a definite and firm conviction that a mistake has been committed.” *Id.* at 221 (quotation omitted).

A. The 2017 Oral Agreement

The district court found that the Fosnesses and the Chmielewskis entered into an oral contract regarding the land in 2017. It found the terms of the 2017 Oral Agreement to be:

i. The Fosnesses would pay \$165,000 total – minus the \$15,000 for the roof replacement to close on the transaction, the payment provided by the Fosnesses to purchase the 1980 Property and the Bear Lake Property, and the payments made toward the current mortgage;

ii. The Chmielewskis, specifically Ms. Chmielewski, would redraw the property lines to establish a new north-south boundary splitting the properties in half to convey title; and

iii. The Fosnesses would receive the eastern portion of the new parcel, inclusive of the lakeshore and the home, and the Chmielewskis would receive the western portion of the new parcel abutting their former property.

Chmielewski disputes that these were the terms of the contract. She asserts that the two properties were never to be split into a western half and an eastern half by a new north-south boundary and that the Fosnesses were meant to purchase only 20 acres of the 1980 Property. She also argues that she never agreed to cover all costs beyond the Fosnesses' purchase price. Chmielewski, however, does not directly challenge any of the district court's findings of fact in her briefing. To the extent that she claims error in these findings, we conclude that they are supported by evidence in the record. *See id.* at 222 (“[A]n appellate court’s duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.” (quotation omitted)). We thus discern no clear error in the district court’s findings of fact regarding the existence and terms of the 2017 Oral Agreement.

B. The 2020 Land Agreement

Even though the district court stated that it “need not reach the issue,” the district court discussed why it found that that 2020 Land Agreement was not the operative contract.

Specifically, the district court concluded that the 2020 Land Agreement lacked consideration and that, even if it did constitute a contract, the proper interpretation of the 2020 Land Agreement was that it merely restated the terms of the 2017 Oral Agreement. These determinations bolstered the district court's conclusion that the 2017 Oral Agreement was the operative agreement. Chmielewski challenges the district court's determinations about consideration and contract interpretation, and we address each issue in turn.

1. Lack of Consideration

“The formation of a contract requires communication of a specific and definite offer, acceptance, and consideration.” *Com. Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006). Consideration for a contract “must differ from what the promisee is already obligated to do either by law or by existing contract.” *Hartung v. Billmeier*, 66 N.W.2d 784, 789 (Minn. 1954).

Here, the district found that the 2020 Land Agreement “appears to have been intended to document the parties’ agreement reached in 2017.” Therefore, the district court concluded, the terms of the two agreements were identical and the 2020 Land Agreement, “to the extent it could be considered a superseding contract, lacked any consideration in addition to what was already agreed to in the [2017 Oral Agreement].”

Chmielewski argues that the 2020 Land Agreement is the operative contract because the 2017 Oral Agreement merged into it. A prior oral agreement merges with and is integrated into a subsequent written agreement when the writing is meant to be the final and complete expression of the agreement. *Lehman v. Stout*, 112 N.W.2d 640, 643-45

(Minn. 1961). “The criterion of the completeness or incompleteness of the writing is the writing itself,” viewed in light of “the circumstances under which, and the purpose for which, the writing was executed.” *Samuel H. Chute Co. v. Latta*, 142 N.W. 1048, 1049 (Minn. 1913). Whether a contract is completely integrated is a question for the trial court. *Taylor v. More*, 263 N.W. 537, 540 (Minn. 1935).

Here, the language of the 2020 Land Agreement contained no merger clause or other indication that it was “meant to contain the whole bargain between the parties.” *Latta*, 142 N.W. at 1049. As for the circumstances of and purpose for its execution, the district court found that the 2020 Land Agreement was meant to document the 2017 Oral Agreement. The district court also noted Mr. Fosness’s testimony that the 2020 Land Agreement “was just a guideline so that there was something on paper before the [Chmielewskis] left for [a trip].” This evidence was within the trial court’s discretion to weigh. *See Kenney*, 963 N.W.2d at 221. The record supports the determination that the 2017 Oral Agreement did not merge into the 2020 Land Agreement but rather remained the operative contract between the parties. *See Lehman*, 112 N.W.2d at 643-45. The district court therefore did not err by determining that the 2020 Land Agreement contained no new obligation and, thus, lacked the necessary consideration to create a contract.

2. Interpretation of the 2020 Land Agreement

The district court determined that, even if the 2020 Land Agreement constituted a contract, the proper interpretation would be that it restated the 2017 Oral Agreement. When determining a contract’s intent, courts “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).

When a contract is ambiguous, parol evidence may be considered. *Id.* “The language of a contract is ambiguous if it is susceptible to two or more reasonable interpretations.” *Id.* Whether a contract is ambiguous is a question of law reviewed de novo. *Id.* When, as here, a contract is not completely integrated, parol evidence “is admissible to prove a term upon which the writing is silent, and which is not inconsistent with what is written.” *Latta*, 142 N.W. at 1049. When extrinsic evidence is considered to interpret an ambiguous contract, the interpretation of the contract is a question of fact. *Staffing Specifix Inc. v. TempWorks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018).

Here, the language of the 2020 Land Agreement at issue is: “Sale of 20 acres and the house and buildings (property) located at 1980 County Road 4 in County of Carlton, Blackhoof Township, Minnesota.” (Emphasis added.) The district court found two terms ambiguous: “1980 County Road 4” and “20 acres.”

Chmielewski argues that these terms are only subject to one reasonable interpretation—that 20 acres of the 1980 Property were to be sold. She asserts that the physical address “1980 County Road 4” refers only to the 1980 Property. She also argues that “‘20 acres’ means ‘20 acres’; nothing more nothing less.” But another reasonable interpretation of 2020 Land Agreement is that the reference to “1980 County Road 4” referred to both parcels and that the “20 acres” was meant to approximate the size of each of the two parcels once the properties were divided by a north-south boundary.

We therefore agree with the district court that the 2020 Land Agreement is ambiguous and turn to whether the district court’s interpretation based on parol evidence is supported by the record. We conclude that it is.

First, the term “1980 County Road 4” was used in the past to refer to both the 1980 Property and the Bear Lake Property together because the Bear Lake Property did not have its own physical address. This is reflected in the documents executing the Chmielewskis’ purchase of the two properties from the third party. The option agreement, purchase agreement, amendment to the purchase agreement, closing disclosure, and the mortgage all refer to both the 1980 Property and the Bear Lake Property with “1980 County Road 4” as the physical address. While Chmielewski points out that there are ways other than a physical address to identify property, these possibilities do not detract from the fact that the term “1980 County Road 4” was used to refer to both properties in the past. Chmielewski also argues that Mr. Fosness never saw any of these documents prior to trial. But Mr. Chmielewski did, and he is the one who drafted the 2020 Land Agreement. Evidence in the record thus supports the determination that “1980 County Road 4” includes the 1980 Property and the Bear Lake Property.

Second, the district court relied on Mr. Fosness’s testimony that the term “20 acres” was “a rough approximation of the acreage to be received” and that “Mr. Chmielewski did not have exact figures.” To the extent the district court relied on this testimony, we must defer to the district court’s credibility determination. *See* Minn. R. Civ. P. 52.01. Moreover, the testimony accords with the facts about the two properties. Each of the properties was 23 to 24 acres in size. A reasonable inference is that “20 acres” was merely an approximation of the half of the combined properties that the Fosnesses would receive under the 2017 Oral Agreement. The record thus supports the district court’s interpretation that the term “20 acres” represented the approximate size of the redrawn parcels.

Moreover, other intrinsic evidence supports the district court’s determination that the 2020 Land Agreement was intended to simply document the agreement reached in 2017. The district court relied on the consistent terminology used over time; the Fosnesses’ testimony about the intent of the 2020 Land Agreement; the Fosnesses’ conduct over time, which was consistent with the 2017 Oral Agreement; and the Chmielewskis’ conduct before September 2021, which was consistent with the 2017 Oral Agreement. On this record, we discern no error in the district court’s determination that the 2017 Oral Agreement is the operative agreement.

II. The district court did not err by concluding that the 2017 Oral Agreement met the part-performance exception to the statute of frauds.

The statute of frauds states that contracts for the sale of land “shall be void unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing and subscribed by the party by whom the lease or sale is to be made.” Minn. Stat. § 513.05 (2024); *see also Radke v. Brenon*, 134 N.W.2d 887, 890 (Minn. 1965). We review *de novo* whether the statute of frauds applies. *Simplex Supplies, Inc. v. Abhe & Svoboda, Inc.*, 586 N.W.2d 797, 800 (Minn. App. 1998).

The parties agree that the statute of frauds applies to the 2017 Oral Agreement, unless it meets an exception. The district court applied the equitable exception to the statute of frauds for cases of part performance. *See* Minn. Stat. § 513.06 (2024). The part-performance exception can be invoked under two theories: the fraud theory and the unequivocal-reference theory. *See Burke v. Fine*, 51 N.W.2d 818, 820 (Minn. 1952). The district court here found that both theories apply to the 2017 Oral Agreement and except

the agreement from the statute of frauds. Chmielewski challenges the district court's conclusions under both theories.

A. The Fraud Theory

The fraud theory of the part-performance exception to the statute of frauds applies “where [a] plaintiff shows that [their] acts of part performance in reliance upon the contract have so altered [their] position that [the plaintiff] will incur unjust and irreparable injury in the event that defendant is permitted to rely on the statute of frauds.” *Id.* This theory is meant to prevent fraud where one party “has been induced or allowed to alter [their] situation on the faith of an oral agreement.” *Brown v. Hoag*, 29 N.W. 135, 138 (Minn. 1886). “[T]he doctrine of part performance ordinarily can be successfully invoked if the vendee took possession of the land and made valuable improvements thereon.” *Bouten v. Richard Miller Homes, Inc.*, 321 N.W.2d 895, 900 (Minn. 1982).

Here, the district court made several findings of fact regarding the Fosnesses' actions taken in reliance on the 2017 Oral Agreement. It found that purchase costs for the sale of the properties by the third party—including earnest money, attorney fees for preparation of the purchase agreement, inspection costs, down payment, and closing costs—were funded entirely by Mr. Fosness. In addition, Mr. Fosness paid every mortgage payment for the properties through trial, even though the Chmielewskis were the sole mortgagors. The purchase and closing costs, mortgage payments, and insurance paid by the Fosnesses for the properties at the time of the June 2023 trial totaled \$113,841.26. Chmielewski, meanwhile, claimed that she had spent about \$13,000 on similar costs at the time of trial.

In addition, as to the 1980 Property, the Fosnesses moved into the house and began making improvements, including roof replacement, septic system replacement, adding gravel to a new driveway, cutting trees, landscaping, and cleaning the property. As to the Bear Lake Property, the Fosnesses placed about \$200 of gravel to improve a path and put up directional signs across the property.² Finally, the Fosnesses sold their prior home in anticipation of taking out a new loan to purchase their half of the redrawn properties.

Chmielewski raises three arguments as to why the district court erred by determining that the fraud theory applies on these facts.

First, Chmielewski argues that the Fosnesses are entitled by contract only to 20 acres of the 1980 Property and maintains that the Fosnesses' possession of and improvements to the Bear Lake Property were insufficient to satisfy the part-performance exception to the Bear Lake Property. But this argument misapprehends the question. The question is not whether the Fosnesses partially performed Chmielewski's understanding of the parties' agreement but rather whether the Fosnesses partially performed the terms of the agreement as found by the district court. And the district court found the terms of the agreement to include the sale of one newly created parcel drawn from both the 1980 Property and the Bear Lake Property. Chmielewski cites no cases that require possession and improvement of the entire property to be acquired. The Fosnesses' possession of and improvement to the

² Chmielewski notes her testimony that, although she and her husband were making improvements to the Bear Lake Property during the time in question, she was not aware of any improvements by the Fosnesses. But the district court apparently credited the Fosnesses' testimony, and we cannot resolve conflicts in testimony or reweigh the evidence. *Kenney*, 963 N.W.2d at 221.

eastern part of the 1980 Property was undisputedly substantial (e.g., moving into the house, replacing the roof and septic system, landscaping). This possession and improvement, along with the Fosnesses' possession and modest improvement of the eastern part of the Bear Lake Property (which did not have a house but rather provided the Fosnesses access to the lake), was done in reliance on the terms of the 2017 Oral Agreement.

Second, Chmielewski observes that payment of purchase money is usually insufficient to satisfy part performance. But “[p]ayment of the price, although not of itself sufficient to admit of the equitable remedy, is always regarded as a strong circumstance in connection with other acts, such as possession or the making of improvements.” *Svenburg v. Fosseen*, 78 N.W. 4, 7 (Minn. 1899). Here, the Fosnesses paid \$113,000 in addition to their possession and improvement of the 1980 Property and their possession and improvement of the Bear Lake Property. Together, these actions constitute sufficient part performance of the 2017 Oral Agreement. *See Ritchie v. Jennings*, 233 N.W. 20, 21 (Minn. 1930) (“Payment made and possession taken under a verbal contract go far.”).

Finally, Chmielewski argues that the Fosnesses will not incur “unjust and irreparable injury” if the statute of frauds is enforced. She notes that the Fosnesses “will be able to keep 20 acres and the house and buildings on [the 1980 Property]—which encompasses essentially all of their improvements.” But the Fosnesses do not want only 20 acres of the 1980 Property. Mr. Fosness testified that he would not have agreed to buy any land unless he received lakeshore and that he specifically told this to the Chmielewskis. Enforcing the statute of frauds here would cause the Fosnesses to purchase land that they never wanted and to forgo the land that they did want, after they provided the entirety of

the mortgage payments and sold their prior home in reliance on the parties' contract. This is unjust and irreparable injury.³

Because the Fosnesses' payment, possession, and improvement were done in reliance upon the 2017 Oral Agreement and "have so altered [their] position that [they] will incur unjust and irreparable injury," *Burke*, 51 N.W.2d at 820, the fraud theory of the part-performance exception to the statute of frauds applies.

B. The Unequivocal-Reference Theory

The unequivocal-reference theory of the part-performance exception to the statute of frauds applies "where the relationship of the parties, as shown by their acts rather than by the alleged contract, cannot reasonably be explained except by reference to some contract between them." *Id.* Under this theory, the actions of the parties must be "unequivocally referable to a contract relationship" between the parties. *Id.* The two essential elements are "possession and part payment." *Shaughnessy v. Eidsmo*, 23 N.W.2d 362, 368 (Minn. 1946). "The possession must be definite and exclusive, and indicate the beginning of a new interest, and be shown to be pursuant to the oral contract." *Bresnahan v. Bresnahan*, 73 N.W. 515, 518 (Minn. 1897). "Whether the acts of part performance are

³ Chmielewski also argues that, if the statute of frauds applies and the Fosnesses receive only a portion of the 1980 Property, the Fosnesses will still receive property worth approximately \$110,000 more than they will have paid for it—a result that is not unjust and irreparable injury. But, for this argument, Chmielewski relies on property valuations conducted in October 2023—four months after the initial trial that resulted in the district court's conclusion that the part-performance exception applied. So any argument based on these valuations was neither presented to nor considered by the district court in determining that the statute of frauds does not apply and is waived for that issue. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

unequivocally referable to the vendor-vendee relationship under the oral contract is . . . a question of fact for the trier of fact.” *Shaughnessy*, 23 N.W.2d at 368. Appellate courts will not reverse findings of fact unless they are clearly erroneous. Minn. R. Civ. P. 52.01.

The district court found that both essential elements were met. The district court observed that the Fosnesses moved into the house on the 1980 Property in 2019 and lived there through trial. And it observed that the Fosnesses also made regular mortgage payments for both properties. The district court concluded that the parties’ acts could be reasonably explained only by reference to a contract between them—and that the evidence established only a vendor-vendee (not a landlord-tenant) relationship. Chmielewski makes two arguments challenging the district court’s finding.

First, Chmielewski argues that the Fosnesses’ signing of the 2020 Land Agreement without hesitation or objection shows that the parties’ actions “are not ‘unequivocally referable’ to a valid oral contract for the eastern half of the Bear Lake [Property].”⁴ But this argument relies on Chmielewski’s construction of the 2020 Land Agreement, which differs from the district court’s. The district court found that the 2020 Land Agreement was meant to document the 2017 Oral Agreement. This finding was based on Mr. Fosness’s testimony that the 2020 Land Agreement was meant to be a “guideline” and that Mr. Chmielewski “indicated in the presence of all parties it would be the same agreement that was reached in 2017.” Therefore, the Fosnesses’ signing of the 2020 Land Agreement without objection does refer to the oral contractual agreement between the parties.

⁴ The Fosnesses appear to assert that this specific argument was not raised below. But the record shows that it was.

Second, Chmielewski argues that the Fosnesses' possession of the Bear Lake Property "is not 'definite and exclusive,' nor does it 'indicate the beginning of a new interest.'" At trial, the Fosnesses testified that they placed gravel and directional signs on the Bear Lake Property. There was also testimony that the Chmielewskis requested permission to hunt and cut down trees on the Fosnesses' half of the Bear Lake Property. But, citing *Bresnahan*, Chmielewski argues that this conduct does not necessarily indicate a contractual relationship, especially when the parties are cousins.

In *Bresnahan*, the Minnesota Supreme Court found that a son's possession—which consisted of sporadically staying on his father's land—was insufficient to satisfy the unequivocal-reference theory because his actions were also referable "to a continuation of the former confidential relations between father and son." 73 N.W. at 518. Here, although the Fosnesses' possession of the Bear Lake Property could arguably be attributable to their familial relationship with the Chmielewskis, the Fosnesses' significant possession of the home on the 1980 Property without paying rent is not merely attributable to the parties being cousins. And, while the possession of the Bear Lake property may be minimal, Chmielewski cites no cases that require possession of the entire parcel to be purchased.

The district court's finding that the parties' acts were unequivocally referable to a vendor-vendee relationship was not clearly erroneous. Thus, the district court did not err in concluding that the 2017 Oral Agreement is not subject to the statute of frauds under both the fraud theory and the unequivocal-reference theory of the part-performance exception.

III. The district court did not err by concluding that Minnesota Statutes section 519.02 did not apply to the 2017 Oral Agreement.

Chmielewski argues that the district court erred by concluding that section 519.02 did not apply to the 2017 Oral Agreement.⁵

Section 519.02 reads in relevant part:

[A]ny married woman, during coverture, may receive, acquire, and enjoy property of every description, and the rents, issues, and profits thereof, and all avails of her contracts and industry, free from the control of her spouse, and from any liability on account of his debts, as fully as if she were unmarried.

Minn. Stat. § 519.02. We have read this statute to prevent a husband from disposing of his wife's property without her consent. *Manderfeld v. Krovitz*, 539 N.W.2d 802, 807 (Minn. App. 1995), *rev. denied* (Minn. Jan. 25, 1996). The district court's application of a statute is reviewed de novo. *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008).

Chmielewski argues that the record does not show that she ever agreed to sell any portion of the Bear Lake Property and, therefore, reliance on her husband's assent alone is improper under section 519.02.

The district court made no specific findings of fact on who accepted the 2017 Oral Agreement. However, the district court summarily denied this argument by Chmielewski and ultimately enforced the 2017 Oral Agreement. Therefore, it can be inferred that the district court found that Chmielewski assented to the agreement. *See Pechovnik v.*

⁵ The Fosnesses argue that Chmielewski did not raise this issue before the district court and that it is therefore forfeited. But Chmielewski made this argument in her posttrial brief. And, while the district court did not directly address this argument, it stated that “[a]ll other issues otherwise raised by the parties and not addressed herein are **DENIED**.” We therefore address the issue.

Pechovnik, 765 N.W.2d 94, 99 (Minn. App. 2009) (noting a district court’s findings of fact can be implicit).

The district court’s findings of fact will not be reversed unless clearly erroneous. Minn. R. Civ. P. 52.01. The implicit finding that Chmielewski consented to the 2017 Oral Agreement is supported by the record. Mr. Fosness testified that both Chmielewskis discussed and agreed to the 2017 Oral Agreement. Chmielewski also acted in accordance with the agreement when she opened the joint bank account with Mr. Fosness.

Because the record supports the implicit finding that Chmielewski consented to the 2017 Oral Agreement, the district court did not err in rejecting her argument under section 519.02.

IV. The district court did not abuse its discretion by ordering specific performance of the 2017 Oral Agreement.

Chmielewski argues that the district court abused its discretion by ordering specific performance of the 2017 Oral Agreement.

Specific performance is an equitable remedy that lies within the “sound discretion” of the district court. *Twin City Bldg. & Loan Ass’n v. Johnson*, 259 N.W. 551, 553 (Minn. 1935). A district court’s order for specific performance will not be reversed unless the order constitutes an abuse of that discretion. *Flynn v. Sawyer*, 272 N.W.2d 904, 910 (Minn. 1978). The district court abuses its discretion if it misapplies the law or makes findings unsupported by the evidence. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022).

Courts consider five factors when determining whether to grant specific performance of an oral contract to purchase real estate. These factors are that

(a) the contract must be established by clear, positive, and convincing evidence;

(b) it must have been made for an adequate consideration and upon terms which are otherwise fair and reasonable;

(c) it must have been induced without sharp practice, misrepresentation, or mistake;

(d) its enforcement must not cause unreasonable or disproportionate hardship or loss to the defendants or to third persons; and

(e) it must have been performed in such a manner and by the rendering of services of such a nature or under such circumstances that the beneficiary cannot be properly compensated in damages.

Johnson v. Johnson, 137 N.W.2d 840, 847 (Minn. 1965).

Here, the district court determined that all five factors weighed in favor of granting specific performance. Chmielewski organizes her arguments regarding the factors in three groups.⁶ We address them accordingly.

A. Factor (a): Clear, Positive, and Convincing Evidence

Factor (a) states that “the contract must be established by clear, positive, and convincing evidence.” *Id.* The existence, terms, and construction of a contract are questions of fact to be determined by the fact-finder. *Rothchild*, 225 N.W.2d at 263. The district court’s findings of fact will not be reversed unless they are clearly erroneous. Minn. R. Civ. P. 52.01.

Here, the district court relied on the Fosnesses’ testimony, the parties’ consistent actions (including signing the 2020 Land Agreement), and third-party testimony to conclude that the 2017 Oral Agreement was sufficiently established.

⁶ Chmielewski makes no argument regarding factor (e).

Chmielewski argues that clear, positive, and convincing evidence is missing because the Fosnesses signed a contradictory written contract without hesitation. But, once again, this argument relies on a construction of the 2020 Land Agreement that differs from the district court's. The district court found that the 2020 Land Agreement was meant to document the 2017 Oral Agreement. This finding is supported by testimony in the record and weighs in favor of clear establishment of the 2017 Oral Agreement.

Chmielewski also urges us to rely on her own testimony that she never agreed to the 2017 Oral Agreement. The district court noted that Chmielewski stood alone in her testimony and that she could not explain why Mr. Fosness otherwise paid for roof repairs, opened the joint account with her, and continued to pay the mortgage.⁷ We cannot reconcile conflicting evidence or reweigh the evidence. *Kenney*, 963 N.W.2d at 221.

Chmielewski has not shown that the district court abused its discretion by determining that the 2017 Oral Agreement was established by clear, positive, and convincing evidence.

B. Factors (b) and (d): Fair and Reasonable Terms and Unreasonable and Disproportionate Hardship and Loss

Chmielewski combines her arguments regarding factors (b) and (d). Factor (b) requires that the contract “be made for an adequate consideration and upon terms which are otherwise fair and reasonable.” *Johnson*, 137 N.W.2d at 847. Factor (d) requires that

⁷ Chmielewski also argues that the Fosnesses only minimally possessed the Bear Lake Property. But possession is not required to establish the existence and terms of the agreement under this factor. And the other evidence relied on by the district court supports its determination about the existence and terms of the contract.

“its enforcement must not cause unreasonable or disproportionate hardship or loss to the defendants or to third persons.” *Id.*

Here, the district court found the terms to be fair, reasonable, and without disproportionate loss to Chmielewski because the Fosnesses would end up paying about 73% of the purchase price for the two properties while receiving only 50% of the land. Accordingly, factors (b) and (d) weighed in favor of specific performance.

Chmielewski argues that the 2017 Oral Agreement is unfair and causes disproportionate loss because it results in her paying costs that exceed the value of the property that she will receive under the 2017 Oral Agreement and that the Fosnesses will pay a sum that is much less than the value of the property that they will receive. In support of her argument, Chmielewski first challenges the district court’s finding about the terms of the parties’ contract. The district court found that the terms of the 2017 Oral Agreement were that the Fosnesses would pay “\$165,000 total – *minus the \$15,000 for the roof replacement to close on the transaction, the payment provided by [the Fosnesses] to purchase the 1980 Property and the Bear Lake Property, and the payments made toward the current mortgage.*” (Emphasis added.) Chmielewski, as the initial buyer of the properties, was left to pay any further costs. The district court’s finding about the terms of the contract is supported by the record, including Mr. Fosness’s testimony, and we will not second guess the district court’s decision to credit it. *See Kenney*, 963 N.W.2d at 221.

Second, we are not convinced that enforcement of this contract is “unconscionable.” “Adequacy or inadequacy of consideration for the property sold is to be determined as of the inception of the contract rather than according to the increased or decreased value of

the property at the time of trial.” *Shell Oil Co. v. Kapler*, 50 N.W.2d 707, 714 (Minn. 1951). Here, the agreement for the Fosnesses to pay 73% of the purchase price, inclusive of costs, for half of the land including the residence was fair and reasonable at the time of inception. The significant accumulation of costs since the parcels were purchased from the third party in 2018 can be attributed to Chmielewski’s failure to redraw the property lines and execute the parties’ agreement, despite Mr. Fosness’s consistent requests. Because Chmielewski agreed to pay these costs and they were reasonable at the inception of the contract, she will not suffer unreasonable and disproportionate loss by paying them now.

In addition, Chmielewski’s argument relies on hypothetical valuations of the properties and compares the value each party would receive. But these property valuations were neither presented to nor considered by the district court at the trial regarding specific performance, and, therefore, the arguments relying on the valuations are forfeited. *See Thiele*, 425 N.W.2d at 582. Regardless, the valuations, conducted in 2023, were affected by six years of fluctuation in property value since the 2017 Oral Agreement. The district court did not err by relying instead on the terms of the agreement at the inception of the contract. *See Kapler*, 50 N.W.2d at 714.

The district court did not abuse its discretion by concluding that factors (b) and (d) weighed in favor of specific performance.

C. Factor (c): Sharp Practice, Misrepresentation, or Mistake

Factor (c) requires that the contract “must have been induced without sharp practice, misrepresentation, or mistake.” *Johnson*, 137 N.W.2d at 847.

The district court here found no evidence of any of these circumstances, noting that Chmielewski was the only person to testify to any uncertainty with regard to the contract terms.

Chmielewski argues that the district court relied too heavily on testimony about statements by Mr. Chmielewski, who is deceased and was “not available to verify and/or discredit any of this information regardless of what the Fosnesses testify to.” But the mere fact that a potential witness passed away does not in itself indicate a sharp practice, misrepresentation, or mistake. Chmielewski makes no specific assertions other than the possibility that the Fosnesses are misrepresenting Mr. Chmielewski’s statements. The district court admitted Mr. Chmielewski’s statements via testimony by the Fosnesses and third-party witnesses under a hearsay exception. It then found this testimony reliable and chose to rely on it in determining the terms of the 2017 Oral Agreement. These decisions lie within the broad discretion of the district court. *See Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015); *Kenney*, 963 N.W.2d at 221.

The district court did not abuse its discretion by concluding that factor (c) weighed in favor of specific performance.

Based on all of the factors, we discern no abuse of discretion in the district court’s ultimate order for specific performance of the 2017 Oral Agreement.

V. The district court did not abuse its discretion in determining the amount that the Fosnesses must pay Chmielewski and, correspondingly, the costs that Chmielewski must bear.

Chmielewski argues that, even if we agree with the district court’s order as to the operative agreement, we should “amend the payments owed by each party.” After the initial

two-day trial, the district court granted Chmielewski a new trial on the sole issue of damages. After a one-day trial on that issue, the district court evaluated the amounts that remain to be paid by the Fosnesses under the contract. It decided that, in the end, the Fosnesses owed Chmielewski \$32,351.35 to complete their purchase. That amount reflected the \$165,000 purchase price, less costs already paid by the Fosnesses: \$15,000 for the roof and \$117,648.47 toward the mortgage and other expenses. Other costs related to the properties that were paid by Chmielewski (interest, insurance, taxes, fees, and escrow amounts) would be borne by Chmielewski.

A district court's determination on damages will be disturbed only for a clear abuse of discretion. *Nelson v. Nelson*, 283 N.W.2d 375, 379 (Minn. 1979). Reversal of an excessive damages award may be necessary where it is "given under the influence of passion or prejudice" or is "not justified by the evidence or is contrary to law." *Lesewski v. Nielsen*, 95 N.W.2d 13, 16 (Minn. 1959) (citing Minn. R. Civ. P. 59.01(e), (g)).

Echoing her arguments referenced above, Chmielewski argues that requiring her to pay all interest, insurance, taxes, and escrow costs for both properties is "fundamentally unconscionable" and causes her "irreparable harm." In the portion of her brief addressing this argument, Chmielewski points this court to her arguments made in the district court. There, she calculated the total payments made at the time of the damages trial and compared each party's "result" after the district court's order.

Under Chmielewski's framing of the September 2023 order's outcomes, the Fosnesses would receive the eastern half of the combined properties, valued at \$320,000, for a purchase price of about \$150,000. Chmielewski would receive the western half of the

combined properties, valued at \$63,000, for a purchase price of about \$120,000. But Chmielewski's calculations rely on valuations made six years after the inception of the 2017 Oral Agreement. While there is no valuation in the record from the time of the contract's formation, the district court found that, "if the parties had executed their agreement in 2017, the amount the Chmielewskis would have received their half of the property for was \$60,900." This purchase price aligns with the 2023 valuation of the property that Chmielewski would receive (\$63,000). Chmielewski has not shown on appeal that the accumulation of costs since 2018 (when the parcels were purchased from the third party) was the result of anything other than her failure to redraw the property lines and execute the sale, despite the Fosnesses' immediate and continued performance. Ordering specific performance of the terms originally agreed to did not result in excessive damages to be borne by Chmielewski.

The district court did not clearly abuse its discretion in determining the amount of money the Fosnesses must pay Chmielewski to complete their purchase under the parties' contract.

Affirmed.