This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1570

Dwight Higgins,
Respondent,

vs.

Andrew Brown,
Defendant,

State Farm Mutual Insurance Company,
Appellant.

Filed July 13, 2026
Affirmed
Bond, Judge

Dakota County District Court
File No. 19HA-CV-24-219

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Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Christan D. Vu, David M. Werwie & Associates, St. Paul, Minnesota; and

Scott G. Williams, Gregory D. Lee, Haws-KM, P.A., St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Bond, Judge; and Jesson, Judge.*

NONPRECEDENTIAL OPINION

BOND, Judge

Respondent-insured brought an action against appellant-insurer seeking to recover uninsured motorist (UM) benefits. Following a damages trial, the jury returned a verdict for respondent. Appellant argues on appeal that the district court abused its discretion by denying its motion for a new trial. We affirm.

FACTS

In March 2021, respondent Dwight Higgins was involved in a car collision with an uninsured motorist. After the collision, Higgins suffered pain in his neck and back, and underwent various medical treatments, including radiofrequency neurotomy injections (RFNs), for pain management.

Higgins was insured through appellant State Farm Mutual Insurance Company. As part of his insurance policy, State Farm provided UM vehicle coverage. The UM policy stated that State Farm would "pay compensatory damages for ***bodily injury*** an ***insured*** is legally entitled to recover from the owner or driver of an ***uninsured motor vehicle***." The policy provided that, if there was a disagreement about the amount of compensatory damages the insured was legally entitled to recover, the parties would either engage in arbitration or the insured could file a lawsuit against State Farm.

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

Higgins and State Farm did not dispute that the uninsured driver was at fault, but they disagreed on the amount of damages Higgins was entitled to recover. Accordingly, Higgins commenced this action against State Farm pursuant to the policy. Because the parties did not dispute liability, the contested issues at trial were the severity of Higgins's injuries and the amount of damages needed to compensate him for those injuries. Higgins contended that the collision caused direct injury to his neck and back, while State Farm maintained that Higgins's pain resulted from temporary aggravation to his preexisting cervical spondylosis, a degenerative spinal condition caused by aging and physical labor.

After a four-day trial, the jury returned a verdict in favor of Higgins, awarding him $686,649.76 in damages. The district court ordered judgment for Higgins in that amount plus $106,274.64 in costs, disbursements, and prejudgment interest. The amount of damages awarded exceeded Higgins's UM policy limits of $250,000.

The district court granted Higgins's motion to amend his complaint to add a bad-faith claim against State Farm under Minn. Stat. § 604.18 (2024); Higgins's bad-faith claim remains pending in the district court. State Farm later brought a motion for a new trial under Minn. R. Civ. P. 59.01, which the district court denied.

State Farm appeals from the district court's order denying its motion for a new trial.[1]

[1] In a special term order, this court determined that the district court's order denying State Farm's new-trial motion was immediately appealable under Minn. R. Civ. App. P. 103.03(d) despite Higgins's bad-faith claim being actively litigated before the district court.

DECISION

"We review a district court's decision to grant or deny a new trial for an abuse of discretion." *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). A district court abuses its discretion when it makes findings of fact unsupported by the evidence, misapplies the law, or delivers a decision that is against logic and the factual record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022).

Rule 59.01 provides that a district court may award a new trial based on a variety of grounds. Relevant here, those grounds include irregularity in the proceedings that deprived the moving party of a fair trial, misconduct of the prevailing party, or errors of law. Minn. R. Civ. P. 59.01(a), (b), (f). A moving party must establish both that one of the grounds for a new trial exists and that they were prejudiced by the district court's ruling. *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 419 (Minn. App. 2010). Prejudice is "[t]he primary consideration in determining whether to grant a new trial." *Wild v. Rarig*, 234 N.W.2d 775, 786 (Minn. 1975). An error is prejudicial if it "might reasonably have changed the result" of the trial. *Torchwood Props.*, 784 N.W.2d at 419 (quotation omitted).

State Farm challenges the district court's order denying its new-trial motion, arguing that the district court abused its discretion by: (1) allowing the case to be referred to as a breach-of-contract action at trial; (2) ignoring Higgins's attorney's misconduct during closing arguments; (3) excluding expert opinion testimony that Higgins's smoking habits impacted his back injuries and chronic pain; (4) finding that State Farm opened the door to testimony by Higgins's treating doctor; (5) allowing a police officer to testify as an "expert accident reconstructionist”; and (6) ordering judgment in an amount exceeding Higgins’s policy limits. We address each argument in turn.

A. Breach-of-Contract References

Before trial, State Farm moved in limine to exclude any characterization of the case as involving a breach-of-contract claim, arguing that UM claims are treated as tort actions. The district court denied State Farm’s motion, reasoning that a claim for UM benefits is a breach-of-contract action under Minnesota law. *See Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011) (setting out elements of a breach-of-contract claim). When describing the case to prospective jurors at the beginning of trial, the district court stated, “This is a breach of contract case brought by the plaintiff, Dwight Higgins, against the defendant, State Farm Mutual Insurance Company.”

In its order denying State Farm’s motion for a new trial, the district court explained that, because Higgins’s UM claim was a contract action, “the additional verbiage of the phrase ‘*breach of* contract’ [was] insufficient to prejudice the jury’s decision.” The district court reasoned that, because

> virtually every contract action is at some level a dispute over whether a contract obligation has not been performed[,] . . . the subtle distinction between describing the matter before jurors as “a contract case” and “a breach of contract case” would not change jurors’ understanding of the nature of the case they were hearing.

On appeal, State Farm does not appear to dispute the district court’s determination that Higgins’s UM claim is a contract action. *See Miklas v. Parrott*, 684 N.W.2d 458, 462 (Minn. 2004) (“An uninsured motorist lawsuit is a contract cause of action.”); *Ruddy v.*

State Farm Mut. Auto Ins., 596 N.W.2d 679, 685 (Minn. App. 1999) ("[A]n action for uninsured motorist benefits is a contract action rather than a tort action."), *rev. denied* (Minn. Sept. 28, 1999). Rather, State Farm argues that the district court's reference to the case as one for breach of contract is grounds for a new trial because the insurance policy provides that State Farm's obligation to pay Higgins compensatory damages does not arise until the appeals process has been exhausted. In other words, under the policy, there could be no breach at the time of trial.

We need not decide whether the district court erred because State Farm fails to show that any alleged error was prejudicial. *See McBee v. Team Indus., Inc.*, 26 N.W.3d 847, 857 (Minn. 2025) ("When an error exists at trial, it is not grounds for reversal unless the error is prejudicial."); *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) (providing that appellate courts do not assume error and the burden of showing error falls on the party relying on it). The district court used the term "breach of contract" just once, when it was describing the case to prospective jurors. The jury was not instructed on the elements of breach of contract and, as State Farm acknowledges, "the case did not proceed as a breach of contract case." On this record, State Farm has not established that the district court's single reference to this being a breach-of-contract case was so prejudicial that it reasonably could have changed the outcome of the trial. *See Torchwood Props.*, 784 N.W.2d at 419.

State Farm also challenges Higgins's use of the phrase "a deal is a deal" during trial, asserting that it "suggests there was some allegation that State Farm was not honoring their deal, when in fact the 'deal' included agreeing to litigate disagreements and it was Higgins who was complaining that he had to abide by that deal." But the parties agree that a claim for UM benefits is a contract action. Given the contractual nature of this litigation, we are not persuaded that the phrase "a deal is a deal" is inaccurate.

State Farm additionally maintains that Higgins made two statements to the jury that misled the jury into believing that State Farm forced him into litigation when, in fact, the parties agreed in the insurance policy that disagreements over damages may be resolved by litigation. This argument is similarly unavailing. Higgins brought his claim against State Farm to determine State Farm's obligations under the insurance policy. Viewed in context, Higgins's statements to the jury that State Farm required Higgins to litigate his claim in court do not amount to prejudicial error. *See McBee*, 26 N.W.3d at 857; *Midway Ctr. Assocs.*, 237 N.W.2d at 78.

B. Attorney Misconduct

State Farm argues that the district court abused its discretion in denying its motion for a new trial based on Higgins's attorney's misconduct. "The determination of whether or not to grant a new trial because of attorney misconduct is not governed by fixed rules, but instead rests wholly within the discretion of the [district] court." *Johnson v. Washington County*, 518 N.W.2d 594, 600 (Minn. 1994). The main consideration in determining whether a new trial is required based on alleged attorney misconduct is whether prejudice occurred—that is, whether the misconduct "affected the outcome of the case." *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 479 (Minn. App. 2006), *rev. denied* (Minn. Aug. 23, 2006). The district court is in the best position to determine whether an attorney's misconduct was prejudicial. *Johnson*, 518

N.W.2d at 601. "An objection to improper remarks, a request for curative instruction, and a refusal by the [district] court to take corrective action are generally prerequisites to the obtaining of a new trial on appeal." *Lake Superior Ctr. Auth.*, 715 N.W.2d at 479 (quotation omitted).

State Farm identifies two instances of attorney misconduct it contends warrant a new trial. First, State Farm argues that Higgins's attorney misrepresented the evidence during closing arguments by referring to "the 86 times that Dwight Higgins relented and went in for those injections, those nerve burnings and submitted to that pain" and stating that Higgins "relented to the doctors" 86 times by going "in for painful treatments."

The undisputed evidence at trial showed that Higgins only received three RFN treatments, not 86. In its order denying State Farm's new-trial motion, the district court determined that, although Higgins's attorney "could have been more precise" in describing Higgins's medical treatment, "any lack of clarity is not reasonably likely to have changed the outcome of the case" because the medical records, testimony, and other filings in the case "consistently state[d] that Higgins received three RFN injections."

While we agree with State Farm that Higgins's attorney erred during closing argument by misrepresenting the number of RFN injections Higgins received, we conclude that State Farm has failed to demonstrate that Higgins's attorney's comments were so prejudicial as to require a new trial. State Farm did not object to either of the "86 times" statements during closing arguments or ask for curative instructions. *Lake Superior Ctr. Auth.*, 715 N.W.2d at 479; *see also Cox v. Crown CoCo, Inc.*, 544 N.W.2d 490, 499 (Minn. App. 1996) ("Generally, a contemporaneous objection to improper remarks and a request for curative instructions are prerequisites to receiving a new trial on appeal."). Further, as the district court reasoned, Higgins's medical records and the testimony of Higgins and the expert witnesses established that Higgins received three RFN injections. The jury heard this fact repeatedly throughout the trial. Faced with this overwhelming medical evidence showing that Higgins received three RFN injections, there is no reasonable possibility that Higgins's attorney's comments impacted the outcome of the trial. *See Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 62 (Minn. 2019) (stating that an evidentiary error is prejudicial if it would have reasonably influenced the jury to alter the result of trial); *see also Lake Superior Ctr. Auth.*, 715 N.W.2d at 479 ("The paramount consideration in determining whether a new trial is required in cases alleging misconduct is whether prejudice occurred.").

Second, State Farm argues that Higgins's attorney committed misconduct by referring to Higgins's job loss during closing arguments, despite Higgins not making a claim for lost wages. State Farm specifically identifies the following statements as misconduct:

> And we've got to put into consideration—it wouldn't be fair if you didn't put into consideration the changes that he's made in the activities that he enjoyed before this crash, the activities that kept him a member of our society who felt good about what he was doing, and he gave back, whether it was helping at the church, whether carrying boxes of food for people, whether it was working as a personal care attendant where he would help people go to their medical visits that had more disabilities than him. Those things brought him joy, brought him some pay for his work, sure.

In denying State Farm's new-trial motion, the district court determined that the challenged statements related to Higgins's claimed damages for pain and suffering and were not an attempt to recover for lost wages. The district court also noted that, immediately after making the challenged statements, Higgins's attorney clarified that "There's no wage loss claim [in this case]. . . . Really what this is, is evidence of his pain that he has in his life and the things that he has to do to manage his pain in his life."

In analyzing closing arguments for attorney misconduct, we must "look to the closing argument as a whole, rather than to selected phrases and remarks." *Ture v. State*, 681 N.W.2d 9, 19 (Minn. 2004). Viewing the closing argument as a whole, we agree with the district court that it was not improper for Higgins's attorney to argue that, while Higgins was not seeking damages for lost wages, Higgins experienced pain and suffering by losing his ability to perform fulfilling volunteer and paid work as a result of the collision. We therefore conclude that the district court did not abuse its discretion by denying State Farm's motion for a new trial based on the alleged attorney misconduct during closing arguments.

C. Exclusion of Expert Testimony

State Farm argues that the district court abused its discretion in denying its motion for a new trial because it erroneously excluded expert testimony on how Higgins's smoking habits impacted his back injuries and chronic pain.

Before trial, the parties agreed to present certain witnesses' testimony via videotaped depositions, including State Farm's medical expert Dr. Nadine Maurer and Higgins's medical expert Dr. Thomas Cohn. Both depositions were taken on the same day, with Dr. Cohn's deposition proceeding first. While Dr. Maurer's expert report listed "smoker" as one of 18 items included in Higgins's "past medical history," it did not include a medical opinion that Higgins's history of smoking significantly contributed to his chronic pain and cervical spondylosis. Yet during her deposition, Dr. Maurer testified at length that Higgins's smoking was a significant contributing factor to his post-collision pain and injuries.

Higgins subsequently moved to exclude Dr. Maurer's deposition testimony on smoking because her expert report did not disclose a medical opinion about how Higgins's smoking habits affected his injuries or medical treatment. Higgins also moved to exclude State Farm's cross-examination of Dr. Cohn on the topic of smoking, asserting that Dr. Cohn's report lacked any medical opinion on smoking and State Farm failed to provide notice of its intent to ask Dr. Cohn about smoking's impact on Higgins's pain or treatment. The district court excluded all testimony related to smoking, reasoning that Dr. Maurer's medical opinion about Higgins's smoking habits was not properly disclosed under Minn. R. Civ. P. 26.01(a)(1)(B) and that State Farm could not use its cross-examination of Dr. Cohn as a "backdoor" to introduce improperly disclosed evidence on smoking.

State Farm contends that the district court's evidentiary rulings were an abuse of discretion. We disagree. The Minnesota Rules of Civil Procedure require disclosure of expert witnesses and their reports, which must contain, among other information, "a complete statement of all opinions the witness will express and the basis and reasons for them" and "the facts or data considered by the witness in forming them." Minn. R. Civ. P. 26.01(b)(2)(A), (B). "When a party seeks to introduce expert testimony not previously noticed, determination of the appropriate remedy is within the [district] court's discretion." *Quill v. Trans World Airlines, Inc.*, 361 N.W.2d 438, 445 (Minn. App. 1985), *rev. denied* (Minn. Apr. 18, 1985). For example, we have concluded that a district court did not abuse its discretion in excluding expert opinions disclosed five days before trial. *Id.* Similarly, here, because Dr. Maurer's expert report did not opine that Higgins's smoking habits impacted his injuries and medical treatment, and because Dr. Maurer provided her expert opinion on this issue for the first time in her deposition just seven days before trial, the district court acted within its discretion in excluding her testimony.

State Farm also challenges the exclusion of its cross-examination of Dr. Cohn regarding the effect of smoking on spinal and musculoskeletal conditions. There is no firm rule that determines the proper limits of cross-examination in all cases. *See Murray v. Walter*, 269 N.W.2d 47, 49 (Minn. 1978). "The circumstances of each case must control, and it is largely for this reason that the manner and scope of cross-examination is left to the discretion of the [district] court, which will be reversed only for abuse of discretion." *Id.*

Here, the district court determined that State Farm failed to comply with the procedures governing expert reports by not disclosing Dr. Maurer's medical opinion about Higgins's smoking habits before her deposition. Dr. Cohn's expert report contained no opinions on smoking, and Dr. Cohn did not discuss smoking during direct examination. *See* Minn. R. Evid. 611(b) ("Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness."). And because Dr. Cohn's deposition was taken before Dr. Maurer's, Dr. Cohn had no time to prepare a response to Dr. Maurer's newly disclosed opinions on smoking or to review pertinent medical literature on the topic. Under these circumstances, we discern no abuse of discretion in the district court's decision to exclude State Farm's cross-examination of Dr. Cohn on smoking.

D. Dr. Agre's Testimony

State Farm next argues that the district court abused its discretion by permitting Higgins's treating physician, Dr. Mark Agre, to testify once the court determined that State Farm had "opened the door" to Dr. Agre's testimony through comments made by State Farm's counsel during opening statements. "Opening the door occurs when one party by introducing certain material creates in the opponent a right to respond with material that would otherwise have been inadmissible." *State v. Valtierra*, 718 N.W.2d 425, 436 (Minn. 2006) (quotations omitted). The doctrine "is essentially one of fairness and common sense, based on the proposition that one party should not have an unfair advantage and that the factfinder should not be presented with a misleading or distorted representation of reality." *Id.* (quotation omitted).

Before trial, State Farm sought to exclude the testimony of Dr. Agre on the basis that Higgins had failed to timely disclose Dr. Agre as an expert witness under Minn. R. Civ. P. 26.01(b) and that Dr. Agre's testimony was needlessly cumulative. The district court granted State Farm's motion in limine.

Then, during opening statements to the jury, State Farm argued:

> You will read from the medical record from Dr. Agre . . . who claims that the March 9, 2021, accident caused a permanent aggravation of Mr. Higgins's cervical spondylosis.

> At first glance that may seem like a strong opinion. But as you listen and read the evidence, pay attention to what this doctor did not review.
>
> The evidence and medical records will show that Dr. Agre . . . , when he reached this conclusion, did not review Mr. Higgins's past medical history. He didn't consider the long track record of documented neck and back issues and complaints and treatments that existed well before the March 9, 2021 accident. He never looked at the EMS records. He never looked at the emergency room records or the CT scan records either. And as you listen to the testimony and examine the evidence, keep that in mind. Dr. Agre's conclusion rests on this incomplete information.

Higgins moved to allow Dr. Agre to testify, which the district court granted. The district court reasoned that State Farm's opening statement attacked Dr. Agre's medical opinion and "opened the door" to Dr. Agre's testimony.

On appeal, State Farm asserts that the opening-the-door doctrine applies only "where an opponent has 'opened the door' by introducing *similarly inadmissible evidence* on the same point." *Busch v. Busch Constr., Inc.*, 262 N.W.2d 377, 386 (Minn. 1977) (emphasis added). State Farm argues that the opening-the-door doctrine is inapplicable here because the parties had stipulated to the admission of the evidence State Farm discussed in its opening statement—Dr. Agre's medical records. But State Farm did more than merely discuss Dr. Agre's medical records; as the district court found, State Farm attacked Dr. Agre's medical opinion and credibility knowing that he would not be permitted to testify. The district court therefore acted within its discretion in determining that State Farm opened the door and allowing Dr. Agre to testify regarding the basis for his medical opinion.

E. Police Officer's Testimony

State Farm contends that it is entitled to a new trial because the district court improperly permitted the responding police officer to testify as an expert witness on accident reconstruction.

During trial, Higgins presented testimony from the police officer who responded to the collision. State Farm objected to Higgins asking the officer "how the vehicles c[a]me together," arguing that the officer was not an expert accident reconstructionist and was not competent to opine on the cause of the collision. The district court sustained the objection. The court then permitted the following testimony, to which State Farm did not object but now contends was erroneously admitted:

> Q: Officer, did you come to conclusions about which vehicle hit which vehicle?
> A: I spoke to a witness that said the truck had come southbound Gratto and struck the other two vehicles.
>
> . . . .
>
> Q: Okay. This is not a minor collision, though?
> A. I would say it's more than a minor collision.
>
> . . . .
>
> Q: Okay. So the vehicle we see, the red vehicle, was facing a different direction than which it was traveling to your knowledge?
> A: Yes, it had been traveling eastbound on University and kind of turned southbound there.
>
> Q: Due to the collision?
> A: Presumably.

The officer also testified:

> Q: Okay. Mr. Higgins told you that he was driving through a green light when he was suddenly hit by a vehicle that entered the intersection, is that correct?
> A: Yes.
>
> Q: Was that consistent with your investigation at the scene, sir?
> A: Yes.
>
> . . . .
>
> Q: Okay. You had information that this collision occurred due to the truck driving at a very high rate of speed?
> A: Correct.

In its order denying State Farm's new-trial motion, the district court determined that the officer was a lay witness because his testimony was based on his own perception of the collision scene. This determination was well within the district court's discretion. "[A] witness qualified as an expert" can provide opinion testimony "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." Minn. R. Evid. 702. Lay witnesses may also provide opinion testimony, but only on opinions "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." Minn. R. Evid. 701.

A police officer, like other witnesses, may testify in the form of a lay opinion when the officer's opinion is rationally based on their perception. Such testimony is not converted into an expert opinion simply because the officers have specialized training or experience. *See State v. Ards*, 816 N.W.2d 679, 683 (Minn. App. 2012). Here, the police officer's testimony was rationally based on his observations at the scene and his discussions with witnesses who saw the collision. Minn. R. Evid. 701. Because the officer's testimony was not based on scientific, technical, or specialized knowledge, *see* Minn. R. Evid. 702, the district court did not abuse its discretion by allowing the police officer to testify as a lay witness.[2]

F. Amount of Damages Awarded

Lastly, State Farm argues that the district court's denial of its new-trial motion was an abuse of discretion because it erred in ordering judgment against State Farm in an amount exceeding Higgins's UM policy limit of $250,000.

The district court entered judgment against State Farm in the amount of $686,649.76 plus $106,274.64 in costs, disbursements, and prejudgment interest. Without citing any legal authority, State Farm's new-trial motion requested that the district court amend the judgment to an amount equal to or less than $250,000 because Higgins's recovery was capped at his policy limits, regardless of the jury's verdict. The district court rejected State Farm's request, concluding that rule 59.01 does not provide an avenue for a new trial based on judgment being entered in excess of an insurance policy's limits.

[2] State Farm also argues that the police officer erroneously relied on hearsay in his testimony. State Farm forfeited this argument by failing to make a contemporaneous hearsay objection when the officer's testimony was offered at trial. *See Eilola v. Oliver Iron Mining Co.*, 275 N.W. 408, 409 (Minn. 1937) ("Objection to the admission of evidence must be taken at the time the evidence is offered."); *see also In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 96 (Minn. App. 2012) ("[W]hen allegedly improper or prejudicial evidence has been admitted without objection, a party may not object to its admissibility for the first time *in a motion for a new trial* or on appeal." (quotation omitted)).

For the first time on appeal, State Farm asserts that it is entitled to relief under rule 59.01(g), which provides that a party may seek a new trial based on a "decision . . . contrary to law." Minn. R. Civ. P. 59.01(g). But State Farm seeks to amend the amount of the judgment, not a new trial. And State Farm fails to point to any authority establishing that a monetary judgment is a "decision" for purposes of the rule. The supreme court has held that "Minnesota Rule of Civil Procedure 59.01 establishes the causes for which a court may grant a new trial and limits the grounds for a new trial to those causes." *Clifford v. Geritom Med, Inc.*, 681 N.W.2d 680, 686 (Minn. 2004). Absent any such authority, we are not convinced that entering a judgment in excess of a UM policy limit is a "decision" that can be challenged in a motion for a new trial under rule 59.01(g). As such, the district court did not abuse its discretion in denying State Farm's motion for a new trial on that basis.

Additionally, State Farm's challenge is premature because the damages judgment is not final. Under Minn. R. Civ. App. P. 103.03(a), an appeal may be taken from a final judgment, or from a partial judgment entered pursuant to Minn. R. Civ. P. 54.02. A final judgment ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. *T.A. Schifsky & Sons, Inc. v. Bahr Constr., LLC*, 773 N.W.2d 783, 788 (Minn. 2009). Because Higgins's bad-faith claim remains pending before the district court, the district court has not entered a final, appealable judgment. State Farm can seek review of the award of damages in a timely appeal from a final judgment resolving Higgins's remaining bad-faith claim.[3] *See* Minn. R. Civ. App. P. 103.04 (stating that on appeal from a judgment, this court may "review any order involving the merits or affecting the judgment").

Affirmed.

[3] An insurer that breaches its duty of good faith may be liable to its insured for judgment in excess of the policy limits. *See Short v. Dairyland Ins. Co.*, 334 N.W.2d 384, 387-88 (Minn. 1983).