

*This opinion is nonprecedential except as provided by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
A25-1600**

Gary Frodermann,
Appellant,

vs.

C.J. Johnsrud, et al.,
Respondents.

**Filed June 8, 2026
Reversed and remanded; motion denied
Larson, Judge**

Rock County District Court
File No. 67-CV-24-100

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Considered and decided by Schmidt, Presiding Judge; Johnson, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

In this breach-of-contract action, appellant Gary Frodermann appeals from the district court's decision to grant summary judgment in favor of respondents C.J. Johnsrud, Jared Danzeisen, and J&D Feeders. Specifically, Frodermann argues that he created a genuine issue of material fact regarding the formation of a contract between the parties

sufficient to withstand summary judgment. Because we agree with Frodermann that a genuine issue of material fact exists regarding whether the parties formed a contract, we reverse and remand.

FACTS

The following facts drawn from the summary-judgment record are summarized in the light most favorable to Frodermann, as the party against whom summary judgment was granted. *See Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019).

On or about January 27, 2024, respondents spoke with Frodermann through telephone conversations and text messages about purchasing specific cattle. That same day, respondents picked up the specified cattle from Frodermann's farm. Frodermann later received a payment for the cattle. According to Frodermann, there remained an unpaid balance of \$18,319.93.¹ An individual named Maxwell Cochran made the payment. Prior to receiving the payment, Frodermann had no relationship with Cochran and had not discussed selling cattle to Cochran. A "payout worksheet" was created that listed "Max Cochran" as the buyer.² Frodermann contacted respondents about the unpaid balance; respondents did not pay the unpaid balance.

On April 25, 2024, Frodermann served respondents with a complaint, alleging breach of contract and seeking the unpaid balance. Frodermann attached several exhibits, including the payout worksheet and text messages exchanged between Frodermann and

¹ There is some discrepancy in the record regarding the amount of the unpaid balance. But, taking the facts in the light most favorable to Frodermann, we accept as true his statement that the unpaid balance is \$18,319.93. *See Henson*, 922 N.W.2d at 190.

² The record does not indicate who made the payout worksheet.

respondents. The parties filed cross-motions for summary judgment. Following a hearing, the district court granted respondents' motion on the basis that Frodermann failed to raise a genuine issue of material fact to show he formed a contract with respondents.

Frodermann appeals.

DECISION

Frodermann challenges the district court's decision to grant summary judgment in respondents' favor. We review a district court's decision to grant summary judgment *de novo*. *City of Waconia v. Dock*, 961 N.W.2d 220, 229 (Minn. 2021). In doing so, "we examine whether there [are] any genuine issues of material fact and whether the district court erred in its application of the law." *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020). We view the evidence in the light most favorable to the party against whom summary judgment was granted. *Henson*, 922 N.W.2d at 190. And we resolve all doubts and factual inferences in favor of the party against whom summary judgment was granted. *Id.* If "reasonable persons might draw different legal conclusions from the evidence presented, summary judgment must be denied." *Kenneh*, 944 N.W.2d at 228.

Here, the district court granted summary judgment on Frodermann's breach-of-contract claim. "A breach of contract is a failure, without legal excuse, to perform any promise that forms the whole or part of the contract." *Lyon Fin. Servs., Inc. v. Illinois Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014). A breach-of-contract claim has three elements: "(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the

contract by defendant.” *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011).

Frodermann argues the district court erred when it granted summary judgment on the sole basis that no issue of material fact existed regarding the formation of a contract between Frodermann and respondents. This element requires evidence of an offer, acceptance, and consideration between the parties. *Com. Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006). “Formation of a contract is judged by the objective conduct of the parties rather than their subjective intent.” *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008) (quotation omitted), *rev. denied* (Minn. Jan. 20, 2009). Typically, contract formation is a question of fact for the jury. *Morrisette v. Harrison Int’l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992).

We agree with Frodermann that, taking the facts in the light most favorable to him, a genuine issue of material fact remains regarding whether the parties formed a contract. Frodermann presented evidence—his affidavit and answers to interrogatories—that, over the telephone, he offered to sell respondents specific cattle at a specific price.³ Frodermann contends that respondents accepted this offer over the telephone. And consideration was exchanged on January 27, 2024, when respondents arrived at his farm with multiple trucks and removed the identified cattle. To corroborate that he entered an oral contract with

³ The affidavit stated: “The agreement between the parties was for Danzeisen and Johnsrud to purchase 30 head of Black Steer (386 lbs average at \$2.69 per pound), 62 Black Heifers (373.87 lbs average at \$2.69), 25 head of Holsteins (420.80 lbs average at \$2.00 per pound). The agreement also included 27 separate calves I had previously purchased.”

respondents over the telephone, Frodermann offered text messages he exchanged with respondents three days after the cattle were removed from the farm, directly seeking payment from respondents for an unpaid balance. In the text messages, respondents state that they will “call [Frodermann] and go over [the] payout.”

Respondents disagree that this evidence is sufficient to create a genuine issue of material fact, arguing that Frodermann’s affidavit and answers to interrogatories are “mere averments” insufficient to defeat summary judgment.⁴ We are not persuaded. Frodermann submitted an affidavit alleging that, based on his personal knowledge, he entered a contract with respondents over the telephone and provided the detailed terms of that contract. This is neither a “mere averment” in the pleadings, *see Ahlm v. Rooney*, 143 N.W.2d 65, 68 (Minn. 1966), nor “evidence which merely creates a metaphysical doubt as to a factual issue,” *see DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). Instead, Frodermann’s affidavit and answers to interrogatories recited his recollection of the terms reached during the telephone conversations which he contends resulted in the formation of an oral contract. *See Roemer v. Eversman*, 304 N.W.2d 653, 653-54 (Minn. 1981) (reversing district court’s decision to grant summary judgment because appellant’s affidavit raised question of material fact as to an essential element of the claim); *see also Cers v. Schmitz*, No. C5-01-882, 2002 WL 47784, at *4 (Minn. App. Jan. 15, 2002) (“Cers did not rest on the

⁴ Respondents also argue that Frodermann conceded to the district court that there was no genuine issue of material fact. Upon reviewing the district court record, we are not persuaded that Frodermann conceded that there was no genuine issue of material fact for the purpose of *respondents’* motion for summary judgment.

allegations of his complaint, but submitted his affidavit describing the alleged oral terms of the agreement reached with Schmitz.”), *rev. denied* (Minn. Mar. 19, 2002).⁵

Respondents also argue the district court appropriately granted summary judgment because the payout worksheet proves that Frodermann entered a contract with Cochran, not respondents. Again, we are not persuaded. The record does not explain who created the payout worksheet.⁶ And Frodermann affirmatively stated in his affidavit that he had no relationship with Cochran and never agreed to sell cattle to Cochran. Viewing the record in the light most favorable to Frodermann, Frodermann has raised a genuine issue of material fact as to whether the parties formed an oral contract for the sale of the cattle.

⁵ We cite nonprecedential opinions only as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

⁶ Respondents argue that one of the text messages attached to the complaint “shows that [r]espondents were not the purchasers of the cattle as they had not even seen the payout worksheet.” The relevant text message reads, “Gary, I will call you and go over this payout. *I have yet to see it.*” (Emphasis added.) We are not persuaded that this text message resolves whether Frodermann and respondents entered an oral contract. Taking the facts in the light most favorable to Frodermann, this text message could also be read to indicate that J&D Feeders created the payout worksheet, but Johnsrud and/or Danzeisen had not reviewed it.

For these reasons, we conclude the district court erred when it granted summary judgment in respondents' favor, and we reverse and remand for further proceedings not inconsistent with this opinion.

Reversed and remanded; motion denied.⁷

⁷ Respondents moved for attorney fees on the basis that this appeal is frivolous. Because we conclude the district court erred when it granted summary judgment in respondents' favor, this appeal is not frivolous. Moreover, the appellate rules require parties to file a motion to request attorney fees. Minn. R. Civ. App. P. 139.05. In doing so, the motion must "state with particularity the grounds and set forth the order or relief sought." Minn. R. Civ. App. P. 127. Here, respondents' motion did not identify a substantive basis for awarding fees; instead, respondents attempted to incorporate a section of respondents' brief. Accordingly, the motion did not comply with our appellate rules. For both reasons, we deny respondents' motion for attorney fees.