

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1620**

Michael L Reger,
Appellant,

vs.

Edward B. Magarian, et al.,
Respondents.

**Filed June 29, 2026
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CV-24-2994

Andrew H. Bardwell, Samuel M. Johnson, Skolnick, Bardwell & Johnson, P.A.,
Minneapolis, Minnesota (for appellant)

Peter M. Lancaster, Brock Huebner, Dorsey & Whitney LLP, Minneapolis, Minnesota (for
respondents)

Considered and decided by Worke, Presiding Judge; Larson, Judge; and Cleary,
Judge.*

SYLLABUS

When the facts are undisputed and the district court does not need to weigh the evidence or apportion fault to apply an equitable doctrine, we apply an abuse-of-discretion standard of review to a district court's dismissal of an *in pari delicto* claim on summary judgment.

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

OPINION

WORKE, Judge

Appellant challenges the district court’s grant of summary judgment in favor of respondents on appellant’s legal-malpractice claims and respondents’ breach-of-contract counterclaim, arguing that the district court erred by (1) applying the doctrine of *in pari delicto*¹ notwithstanding respondents’ failure to address advice-of-counsel issues in the underlying securities-fraud litigation; (2) making factual findings to determine that he was *in pari delicto* with his prior counsel; and (3) determining that the parties’ attorney-fee agreement was unambiguous. Because we conclude that the district court did not err in interpreting the law and no genuine issues of material fact remain, we affirm.

FACTS

The following facts are drawn from the record available to the district court on a motion for summary judgment brought by respondents Edward B. Magarian, James K. Langdon, and their law firm Dorsey & Whitney LLP (Dorsey) (collectively, respondents) against appellant Michael L. Reger in Reger’s legal-malpractice lawsuit.

In 2012, Reger and a co-founder took their company public as Dakota Plains Holding Company (Dakota Plains). Before Dakota Plains went public, in-house counsel calculated share-transfer percentages to Reger family members that would reduce Reger’s ownership of Dakota Plains to less than five percent. Emails between Reger, in-house

¹ *In pari delicto* is latin for “in equal fault.” *Black’s Law Dictionary* 941 (12th ed. 2024) (defining *in pari delicto*). Under the doctrine, “a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing.” *Id.* (defining the *in pari delicto* doctrine).

counsel, and counsel at Faegre Drinker Biddle & Reath LLP (Faegre) show that Reger was advised that, to reduce his shares, he needed to transfer “beneficial ownership” of those shares. Relying on this advice, Reger transferred company shares to his minor children to lower his ownership percentage, but he maintained control over those shares. Because Reger controlled the shares, he needed to file Form 13D with the Securities and Exchange Commission (SEC), disclosing that he owned more than five percent of Dakota Plains’ shares—which is required by the Securities and Exchange Act (Exchange Act).

Reger’s failure to comply with this requirement led to a Department of Justice investigation, an SEC investigation, and a private civil securities fraud action. Reger engaged Dorsey to represent him in these matters. Dorsey negotiated with the federal prosecutor and avoided a federal indictment of Reger. Dorsey also negotiated a settlement with the SEC, requiring Reger to pay approximately \$8 million.

Dakota Plains shareholders pursued a private fraud action in federal court, suing Reger and his business partner, among others. *See Gruber v. Gilbertson*, 628 F. Supp. 3d 472 (S.D.N.Y. 2022). Dorsey represented Reger and the other defendants in this action. A jury found that Reger intentionally defrauded investors. *Id.* at 475. The court had instructed the jury that, to be liable, Reger must have “omitted a material fact he was under a duty to disclose” and “made that omission knowingly and with intent to defraud.” The jury was also instructed that “knowingly” meant Reger “acted with actual knowledge of the facts and circumstances that made his conduct a violation of the securities laws.” And the district court instructed the jury that “with intent to defraud” meant Reger “intended to obtain money or property by deception.”

At trial, Dorsey argued that Reger relied on his prior counsel's advice as a defense against scienter.² But the federal court rejected this argument because the defense required Reger to seek advice from counsel who is "disinterested and independent." *Id.* at 492 (quotation omitted). Ultimately, Reger could not contest the scienter element of securities fraud by relying on his prior counsel's advice because Dakota Plains' in-house counsel was too involved in the underlying conduct. *Id.* While ruling on damages, the court rejected Reger's advice-of-counsel argument again, stating that, "absent clearer evidence that [in-house counsel] himself violated the securities laws, the [c]ourt sees no basis upon which to assign [in-house counsel] responsibility for plaintiffs' loss." *Gruber v. Gilbertson*, 647 F. Supp. 3d 100, 116 (S.D.N.Y. 2022).

Reger then initiated this action in district court against respondents, alleging negligence and breach of fiduciary duty. Reger argued that respondents were negligent by failing to properly determine the applicable statute of limitations for a malpractice claim against his prior in-house counsel and Faegre, precluding Reger from bringing such a claim. Reger also alleged that respondents breached fiduciary duties because of this negligence. Respondents filed their answer and counterclaim, alleging breach of contract, Reger's failure to pay invoiced amounts, and account stated.

² Scienter is an essential element of the intentional tort of fraud. *Florenzano v. Olson*, 387 N.W.2d 168, 173 (Minn. 1986). An actor's representation is made with the requisite scienter, or "fraudulent intent," when that representation is known to be false or when it is asserted as of the actor's own knowledge when they do not in fact know whether the representation is true or false. *Id.*

Respondents moved for summary judgment. After a hearing, the district court granted respondents' motion.³ The district court entered judgment in favor of respondents on their counterclaim in the amount of \$593,440.59. This appeal followed.

ISSUES

- I. Did the district court err by dismissing appellant's claims under an in pari delicto theory?
- II. Did the district court err by granting summary judgment in favor of respondents on their breach-of-contract counterclaim?

ANALYSIS

Appellate courts review summary-judgment determinations de novo “to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law.” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). “A defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff's claim.” *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). On summary judgment, the evidence is viewed “in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

³ The district court dismissed respondents' account-stated counterclaim with prejudice.

I. The district court did not err by dismissing Reger’s claims under an in pari delicto theory.

Reger argues that the district court erred by dismissing his claims under an in pari delicto theory because, in so doing, the district court inappropriately engaged in fact-finding. We disagree.

A. Standard of Review

Reger asserts that we should review de novo the district court’s determination on his in pari delicto claims. Respondents contend that the abuse-of-discretion standard applies.

Prior nonprecedential opinions from this court have applied de novo and abuse-of-discretion standards of review to in pari delicto claims on appeal from summary judgment. Generally, in pari delicto is an equitable doctrine that is reviewed under an abuse-of-discretion standard. *Christians v. Grant Thornton, LLP*, 733 N.W.2d 803, 814 (Minn. App. 2007), *rev. denied* (Minn. Sept. 18, 2007). A de novo review applies to a district court’s “equitable determinations . . . made as a matter of law on summary judgment.” *Herlache v. Rucks*, 990 N.W.2d 443, 450 n.4 (Minn. 2023). But when the facts are undisputed and the district court does not need to weigh the evidence or apportion fault to apply an equitable doctrine, we apply an abuse of discretion standard of review to a district court’s dismissal of an in pari delicto claim on summary judgment.⁴

⁴ The supreme court states that a deferential standard of review, not de novo, may still be appropriate on summary judgment after a district court “balances the equities” and “determines not to award equitable relief.” *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 860 (Minn. 2011). While the parties here do not dispute the facts that are material to the disposition of this case, the district court

B. In Pari Delicto

The doctrine of in pari delicto “is based upon judicial reluctance to intervene in disputes between parties who are both wrongdoers in equal fault.” *State by Head v. AAMCO Automatic Transmissions, Inc.*, 199 N.W.2d 444, 448 (Minn. 1972). One purpose of the doctrine “is to prevent the courts from getting thrust into the position of finding facts where the parties have devised a scheme to deceive outsiders.” *Long v. Smead Mfg. Co.*, 383 N.W.2d 452, 455 (Minn. App. 1986), *rev. denied* (Minn. May 29, 1986). A party who “engages in a fraudulent scheme forfeits all right to protection, either at law or in equity.” *AAMCO*, 199 N.W.2d at 448 (quotation omitted).

In order to prevail on a legal-malpractice claim, Reger needed to prove “[(1)] the existence of an attorney-client relationship; [(2)] acts amounting to negligence or breach of contract; [(3)] that such acts were the proximate cause of [Reger]’s damages; and [(4)] that, but for defendant’s conduct, [Reger] would have been successful in the action.” *Rouse v. Dunkley & Bennett, P.A.*, 520 N.W.2d 406, 408 (Minn. 1994). To survive summary judgment on but-for causation to support a legal-malpractice claim involving a case-within-a-case, Reger needed to “show that he would have survived summary judgment on the underlying, but forgone claim.” *Id.* at 410.

exercised discretion by determining that the in pari delicto doctrine precluded Reger’s underlying claims. Even though the district court did not “balance[] the equities,” like in *SCI Minn.*, it was acting within its discretion by determining the doctrine applied because of Reger’s prior SEC disgorgement and fraud adjudication.

Regarding securities fraud, the district court concluded that Reger was adjudicated for intentional wrongdoing in the civil securities fraud action because the jury found that Reger knowingly violated the Exchange Act, and the federal court upheld the jury's determination.

In Reger's present claim, the district court reasoned that, even if in-house counsel or Faegre were found to have committed fraud or intentional wrongdoing, that fraud requires the element of scienter. *See Florenzano*, 387 N.W.2d at 173. At most, Reger's testimony indicated that his prior counsel may have negligently advised him, and Reger introduced no facts indicating that prior counsel committed intentional wrongdoing. Because Reger failed to introduce such facts, the district court concluded that (1) there were no genuine issues of material fact regarding Reger's prior counsel's conduct; (2) in pari delicto barred Reger's underlying claims of malpractice against prior counsel; and (3) Reger's claims against respondents, accordingly, failed for lack of but-for causation.

Reger argues that the district court must have engaged in inappropriate fact-finding to reach this conclusion. To support his claim, Reger relies on this court's decision in *Provision Media, Inc. v. Century Coll.*, No. A24-0376, 2024 WL 5244967 (Minn. App. Dec. 30, 2024), *rev. denied* (Minn. Apr. 15, 2025),⁵ arguing that in pari delicto is inappropriate for resolving cases on summary judgment because the doctrine "almost always" requires an apportionment of fault between the alleged wrongdoers. But we reversed the district court's grant of summary judgment in *Provision Media* because

⁵ This case is nonprecedential and, therefore, not binding. Nonprecedential opinions may be cited as persuasive authority only. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

genuine issues of material fact remained and summary judgment was, therefore, inappropriate. *See id.* at *6-7.

Reger's case is easily distinguishable from *Provision Media* in that the district court here did not need to weigh the evidence or apportion fault to apply the equitable doctrine of in pari delicto. Even if Reger's claims against his prior counsel were valid, Reger's sworn admissions and disgorgement to the SEC admitting he violated securities laws and the jury's determinations that Reger committed securities fraud, would bar his claims—as the district court concluded. *See AAMCO*, 199 N.W.2d at 448 (providing that a party who “engages in a fraudulent scheme forfeits all right to protection, either at law or in equity” (quotation omitted)).

Reger's mere assertions that he transferred his shares on prior counsel's advice are insufficient to establish “fraud or similar wrongdoing” on prior counsel's part. *See id.*; *see also Leiendecker v. Asian Women United of Minn.*, 848 N.W.2d 224, 230 (Minn. 2014) (providing that “allegations, standing alone, are not evidence” (quotation marks omitted)). Similarly, the assertions fail to overcome Reger's own fraudulent conduct such that any genuine issue of material fact could be resolved in his favor on summary judgment. *See AAMCO*, 199 N.W.2d at 448.

Because the facts were undisputed and the district court did not need to weigh the evidence or apportion fault to determine the in pari delicto doctrine applied, the district court did not abuse its discretion by granting respondents' motion for summary judgment on Reger's claims.

C. Advice of Counsel

Reger argues that respondents' failure to raise the advice-of-counsel defense in the civil securities fraud case prohibits the application of in pari delicto in this case. Reger's assertion that respondents were negligent in advising him on the statute-of-limitations that applied to his claim against his prior counsel also fails based on our previous analysis. Even if Reger's claims were not barred by his own admissions and adjudication of fraud, the district court correctly concluded that Reger's testimony failed to satisfy the fraud or similar intentional-wrongdoing requirement. Absent genuine issues of material fact regarding prior counsels' alleged fraud or intentional wrongdoing, Reger's prior attorneys could not be "wrongdoers in equal fault" compared to Reger. *See id.*

The district court correctly concluded that in pari delicto barred Reger's claims in the underlying malpractice case and, therefore, Reger's claims against respondents lacked but-for causation. Thus, the district court did not err by concluding that there was no genuine dispute of material fact regarding Reger's wrongdoing and did not abuse its discretion by applying the equitable doctrine of in pari delicto to bar his legal-malpractice claims. *See Rouse*, 520 N.W.2d at 410; *see also Lubbers*, 539 N.W.2d at 401.⁶

⁶ Because we conclude that the district court did not abuse its discretion by determining that in pari delicto would bar Reger's underlying legal malpractice claim, we do not reach a decision on Reger's claim that the district court erred by implicitly applying collateral estoppel by determining that Reger could not have prevailed in a malpractice claim against his prior counsel under the doctrine. The district court did not apply or cite the elements of collateral estoppel in granting summary judgment. Instead, the district court's decision rested largely on Reger's own admissions of wrongdoing and the federal jury's determinations that he intentionally defrauded investors.

II. The district court did not err by granting respondents summary judgment on their breach-of-contract counterclaim.

Reger argues that the district court erred by granting respondents summary judgment on their breach-of-contract counterclaim. Specifically, Reger asserts that the district court erred in interpreting what the term “damages” meant under the parties’ fee agreement.

Interpreting a written contract is a question of law reviewed de novo. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003). “Absent ambiguity, the terms of a contract will be given their plain and ordinary meaning.” *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn. App. 2003), *rev. denied* (Minn. Feb. 25, 2004).

In relevant part, the parties’ agreement states:

As to the invoices from July 1, 2022 to appeal (if any), Dorsey will not receive any additional fees other than the 1/3 of standard rate unless Dorsey successfully argues for a damage amount of \$14 million or lower. If that occurs, then Dorsey shall receive the remainder of its fees [up] to 100%.

The parties disagree over the district court’s interpretation of the word “damage.” Reger asserts that the final damage amount exceeded \$14 million, meaning he is not obligated to pay Dorsey under the agreement. Respondents counter that the final damage amount was the judgment in the civil securities fraud case, which totaled \$234,773.15, meaning that Reger was obligated to pay under the agreement.

Here, the district court concluded that the term “damage” in the modified agreement is subject to “one interpretation: the damage amount [Reger] was ordered to pay in the civil

securities fraud case.” Black’s Law Dictionary defines “damages” as “[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury.” *Black’s Law Dictionary* 488 (11th ed. 2019). Under the modified agreement, Reger was liable only for 100% of Dorsey’s fees if Dorsey succeeded in resolving the matter for a damage amount under \$14 million. Dorsey successfully argued for a damage amount under \$14 million because Reger was ordered to pay damages totaling only \$234,773.15 in the civil securities fraud action.

The district court properly concluded that summary judgment was appropriate on respondents’ counterclaim because no genuine issues of material fact exist in interpreting the unambiguous terms of the modified fee agreement.

DECISION

Because the facts were undisputed and the district court did not need to weigh the evidence or apportion fault, the district court did not abuse its discretion by applying the in pari delicto doctrine to Reger’s claims. And, because there are no genuine issues of material fact to survive summary judgment, the district court did not err by granting respondents’ motion for summary judgment on Reger’s claims and respondents’ counterclaim.

Affirmed.