

*This opinion is nonprecedential except as provided by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
A25-1646**

Brandon Knowles,
Respondent,

vs.

Bradley Larry Knowles,
Appellant.

**Filed May 11, 2026
Affirmed
Bond, Judge**

Cass County District Court
File No. 11-CV-23-1487

Brandon E. Knowles, Monument, Colorado (self-represented respondent)

Thomas C. Pearson, Cody D. Schmidt, Gammello-Pearson, PLLC, Baxter, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Reyes, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

BOND, Judge

In this partition action, appellant challenges the district court's order confirming the referees' partition report and granting summary judgment in favor of respondent. We affirm.

FACTS

Appellant Bradley Larry Knowles and respondent Brandon Knowles are brothers who own three parcels of land in Cass County as tenants in common.¹ The two northern parcels are undeveloped land while the larger southern parcel has a cabin that is uninsurable due to disrepair.

The brothers inherited the parcels from their father in 2015 and they cooperatively paid for the maintenance and property expenses on the parcels until 2022, when their relationship began to deteriorate. In July 2022, respondent sent appellant a new property-management proposal. Appellant did not agree with the proposal. In June 2023, respondent hired ProNorth Appraisal, LLC to appraise the three parcels (the ProNorth Appraisal). The ProNorth Appraisal determined that the total fair-market value of the parcels as of June 26, 2023 was \$404,000. The two northern parcels were valued at \$82,000 and \$55,000, and the southern parcel with the cabin was valued at \$267,000. Appellant did not agree with the ProNorth Appraisal.

In October 2023, respondent brought a partition action to divide the parcels, alleging that the parties' relationship made co-ownership unworkable and requesting that the district court use the fair-market value determined by the ProNorth Appraisal and award respondent the southern parcel and appellant the two northern parcels plus an equalizing payment of \$65,000. In appellant's answer, appellant disputed respondent's allegations

¹ This recitation of facts derives from the referees' report, the district court's findings of fact, conclusions of law, order for judgment, and order for partition, and other parts of the record relevant to the issues raised on appeal.

against him but agreed to partition. In December, appellant obtained an appraisal from Johanneck Appraisals, LLC (the Johanneck Appraisal). The Johanneck Appraisal determined that the total fair-market value of the three parcels as of December 1, 2023, was \$385,000. The Johanneck Appraisal valued the two northern parcels at \$85,000 and \$55,000 and southern parcel at \$245,000. The parties agreed with the Johanneck Appraisal.

After negotiations proved unsuccessful, the parties requested that the district court appoint referees. The district court did so, and directed the two appointed referees to submit a report specifying: (1) “[t]he manner in which the parcels shall be partitioned,” (2) “[t]he fair market value of each party’s partition,” and (3) “[i]f the partition does not create awards of equal value, the value of any equalization payment due to the party receiving the less valuable portion.”

In August 2024, after interviewing the parties, the referees filed their report. The referees’ report included various factual findings and four recommendations as to the manner in which the parcels should be partitioned: (1) partition the parcels in kind such that the parties receive equal market value, (2) award respondent a portion of the southern parcel including the cabin, (3) award appellant the two northern parcels, “plus however much of the southern parcel . . . as necessary to equalize value,” or (4) in lieu of splitting the southern parcel, order respondent to pay appellant an equalizing payment of \$52,500.²

² The district court and the parties refer to this payment in various ways, including equalizing payment, offsetting payment, and owelty. For consistency, this opinion uses the term “equalizing payment.”

The referees noted that “it [was] presently unknown among the parties whether any attempt to further subdivide the Subject Properties into more parcels would entail significant cost.”

After the parties conducted additional discovery, respondent moved the district court to confirm the referees’ report and grant summary judgment in his favor. Specifically, respondent asked the district court to order partition in kind with compensation as reflected in the fourth recommendation from the referees’ report. With his motion, respondent submitted evidence—including a map and photos of the property, a table of expenses related to the property, a police report, and various repair and survey estimates—to support his argument that it was undisputed that subdividing the southern parcel would be prejudicial, impractical, and cost-prohibitive. Appellant did not file a written opposition to the motion for summary judgment, move to set aside the referees’ report, or submit any evidence to the district court.

The district court held a summary-judgment hearing at which both parties appeared with counsel. Appellant argued that the matter should proceed to trial on the equalizing-payment portion of the case but did not submit evidence or request additional time to complete discovery. After the hearing, the district court issued an order confirming the referees’ report and granting summary judgment in favor of respondent. Based on the referees’ finding that there was not “great prejudice” to the parties preventing partition in kind, the district court ordered partition in kind with compensation. The district court determined that splitting the southern parcel would be impractical and the southern parcel was more valuable than the combined value of the two northern properties such that an equalizing payment was appropriate. After determining that no genuine issues of material

fact remained for trial, the district court adopted the fourth recommendation of the referees' report, awarded the southern parcel to respondent and the two northern parcels plus an equalizing payment of \$52,500 to appellant, and entered judgment in favor of respondent.

Appellant moved for a new trial pursuant to Minn. R. Civ. P. 59, or in the alternative, for amended findings pursuant to Minn. R. Civ. P. 52.02. Appellant's posttrial motions asserted that the referees' factual findings were "flawed" and that unresolved issues existed about the proper amount of the equalizing payment. The district court denied appellant's motions. The district court reasoned that appellant never challenged the referees' report, did not file any documents in opposition to respondent's summary-judgment motion or submit evidence showing a genuine issue of material fact preventing summary judgment in favor of respondent, and failed to satisfy the legal standard for a new trial or amended findings.

This appeal follows.

DECISION

Appellant challenges the district court's decision to confirm the referees' report and order partition in kind with compensation and to grant summary judgment in favor of respondent. Because appellant's arguments implicate different standards of review, we consider them separately.³

³ Respondent argues that appellant failed to properly preserve his arguments for appellate review because he did not file a written opposition to respondent's summary-judgment motion. But appellant appeared at the summary-judgment hearing and presented oral arguments to the district court opposing respondent's summary-judgment motion. We therefore consider the merits of appellant's arguments.

I. The district court did not abuse its discretion by ordering partition in kind with compensation.

Partition actions of real property are governed by chapter 558 of the Minnesota Statutes, which provide multiple ways in which a partition action may be resolved. *Neumann v. Anderson*, 916 N.W.2d 41, 47 (Minn. App. 2018), *rev. denied* (Minn. July 17, 2018). One such way is for the district court to order a partition in kind. Minn. Stat. § 558.01 (2024).⁴ “A partition in kind is the physical division of property held in tenancy in common.” *Neumann*, 916 N.W.2d at 47 (quotation omitted). The district court may also order a partition in kind with compensation. Minn. Stat. § 558.11. Under this method, “[w]hen it appears that partition cannot be made equal between the parties without prejudice to the rights or interests of some, the court may adjudge compensation to be made by one to another for equality of partition.” *Id.* This compensation, known as owelty, may be ordered “when necessary to make an equitable and fair division.” *Neumann*, 916 N.W.2d at 47 (quotation omitted). In addition to the statutory remedies, a district court “may exercise its general equitable powers and resort to the most advantageous plans which the nature of the particular case admits in effecting, without great prejudice to any of the owners.” *Swogger v. Taylor*, 68 N.W.2d 376, 383 (Minn. 1955). For these reasons, a district court’s decisions regarding the division of property in a partition action will not be

⁴ This partition action was commenced before August 1, 2025, and is therefore governed by Minnesota Statutes chapter 558. Minn. Stat. §§ 558.01-.32 (2024). The Minnesota Partition Act, Minn. Stat. §§ 558A.01-.29 (Supp. 2025), governs partition actions commenced on or after August 1, 2025.

reversed absent an abuse of discretion. *Glenwood Inv. Props., L.L.C. v. Carroll A. Britton Fam. Tr.*, 765 N.W.2d 112, 117 (Minn. App. 2009).

Once a district court determines that partition is necessary, the partition statute requires that referees be appointed “to make partition and set off the shares of the several persons interested as determined by the judgment.” Minn. Stat. § 558.04. The referees must “make a report of their proceedings . . . describing the property and the share allotted to each party, with a particular description thereof.” Minn. Stat. § 558.06. Upon receiving a referees’ report, the district court “may confirm or set aside the report.” Minn. Stat. § 558.07.

A request to set aside a referees’ report is “usually considered as analogous to a motion for a new trial, and the report as entitled to the same force and effect as the verdict of a jury or a finding made by the court.” *Neumann*, 916 N.W.2d at 49 (quotation omitted). Accordingly, a referees’ report in a partition action may only be set aside if “it is shown by a very clear and decided preponderance of evidence that the [referees] have made a grossly unequal allotment.” *Id.* at 50-51 (quotation omitted). Similarly, factual findings in a referees’ report will not be set aside unless the challenging party can demonstrate that the report’s findings are “clearly and palpably against the evidence.” *Id.* at 53 (quotation omitted) (discussing “the special deference to which the referees’ report is due”).

Appellant argues that the district court abused its discretion when it confirmed the referees’ report, contending that the referees exceeded their authority and made erroneous factual findings that appellant did not have an opportunity to rebut. Specifically, appellant challenges the referees’ findings that (1) the parties cooperatively paid for maintenance and

ongoing property expenses for the parcels from November 2015 through September 2022, (2) appellant did not agree to the ProNorth Appraisal, (3) appellant prohibited respondent from accessing the property on a certain date, and (4) the parties agreed to the Johanneck Appraisal. Appellant maintains that these errors amount to irregularities in the proceedings warranting a new trial, specifically on the issue of the amount of equalizing payment. We disagree.

The referees' report recommended partition in kind to allow each party to receive equal fair-market value. To accomplish an equal division, the report recommended that appellant receive the northern parcels, respondent receive the southern parcel, and that higher-value southern parcel either be subdivided "as necessary to equalize value," or "an [equalizing] payment" be awarded from respondent to appellant in the amount of \$52,500. The district court's order confirmed the referees' report and ordered partition in kind with compensation in the amount of \$52,500.

At the time the district court was considering respondent's motion for summary judgment, appellant did not move to set aside the referees' report. Appellant presented an oral argument in opposition to respondent's summary-judgment motion, but he did not submit any evidence to the district court in support of his argument that the referees made clearly erroneous factual findings. As we observed in *Neumann*, "[a] party seeking to set aside a referees' report may find it necessary to introduce evidence to contradict the referees' findings in order to demonstrate that the referees' report is clearly and palpably against the evidence." *Id.* at 53 (quotation omitted). Contrary to appellant's argument, the record shows that appellant had an opportunity to rebut the referees' findings and introduce

evidence to support his position that the referees made clearly erroneous factual findings and the proposed equalizing payment was clearly erroneous, but he failed to do so.

Relatedly, appellant argues that the referees exceeded their authority by making “one-sided” and clearly erroneous factual findings. But to succeed on this claim, appellant must show that the report’s findings are “clearly and palpably against the evidence.” *See id.* at 52-53 (quotation omitted). Again, appellant did not move to set aside the referees’ report or, in opposing summary judgment, present any evidence to contradict the referees’ findings. Based on our review of the record, we discern no basis on which to conclude that the referees’ findings are “clearly and palpably against the evidence.” *See id.* (quotation omitted).

Therefore, we conclude that the district court did not abuse its discretion by ordering partition in kind with compensation in the amount of \$52,500.

II. The district court did not err in granting summary judgment in favor of respondent.

We review a district court’s grant of summary judgment *de novo*, analyzing whether there are any genuine issues of material fact and whether the district court correctly applied the law. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). “We view the evidence 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).

Summary judgment shall be granted if the moving party shows that there is no genuine issue of material fact and they are entitled to judgment as a matter of law. Minn.

R. Civ. P. 56.01. “A genuine issue of material fact exists when reasonable minds can draw different conclusions from the evidence presented.” *Rygwall, as Tr. for Rygwall v. ACR Homes, Inc.*, 6 N.W.3d 416, 427 (Minn. 2024). The nonmoving party “cannot defeat a summary judgment motion with unverified and conclusory allegations or by postulating evidence that might be developed at trial.” *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn. 2001); *see also Wendell v. Comm’r of Revenue*, 7 N.W.3d 405, 413 (Minn. 2024) (stating that to demonstrate the existence of a genuine issue of material fact, the nonmoving party “must do more than rest on mere averments” (quotation omitted)). Rather, the nonmoving party “must produce evidence that is sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *Metro. Transp. Network, Inc. v. Collaborative Student Transp. of Minn., LLC*, 6 N.W.3d 771, 778 (Minn. App. 2024) (quotation omitted), *rev. denied* (Minn. July 23, 2024).

Appellant argues that the district court erred in granting summary judgment for respondent because genuine issues of material fact exist relating to the amount of the equalizing payment based on “costs expended by [a]ppellant over the course of ownership of the parcels.” The referees’ report recommended an equalizing payment in the amount of \$52,500, and the district court confirmed the referees’ report and recommendation. As we have explained, appellant did not object to the referees’ report or file a written opposition to respondent’s motion for summary judgment. Even at the summary-judgment hearing, appellant presented no evidence calling into question the amount of equalizing payment.

Appellant points this court to his interrogatory responses which indicate that he paid for certain property-related expenses like snow removal. But, viewed in the light most favorable to appellant as the nonmoving party, these unsupported general assertions do not create a genuine issue of material fact as to the appropriateness of either partition in kind with compensation or the amount of the equalizing payment as found by the referees and confirmed by the district court. See *Wendell*, 7 N.W.3d at 413 (stating “mere averments” by the nonmoving party are insufficient to show the existence of a genuine issue of material fact (quotation omitted)); *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) (stating “general assertions . . . are not sufficient to create a genuine issue of material fact for trial”).

Appellant argues that additional supporting facts could be developed at trial. As the nonmoving party, however, appellant “cannot defeat a summary judgment motion with unverified and conclusory allegations or by postulating evidence that might be developed at trial.” *Funchess*, 632 N.W.2d at 672. At the summary-judgment hearing, appellant did not submit an affidavit pursuant to Minn. R. Civ. P. 56.04 attesting to his inability to “present facts essential to justify [his] opposition” to summary judgment or request additional time for discovery.

We therefore conclude that the district court did not err by granting summary judgment in favor of respondent and, based on its confirmation of the referees' report, ordering partition in kind with compensation to appellant in the amount of \$52,500.⁵

Affirmed.

⁵ Respondent argues that, as the prevailing party, he is entitled to costs and fees. This argument is not appropriately made in a brief to this court, and we decline to consider it. *See* Minn. R. Civ. App. P. 139.01, 139.03, subd. 1.