This opinion is nonprecedential except as provided by Minn.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
A25-2192

Minnesota Attorney General's Office,
Appellant,

vs.

Schierholz and Associates, Inc., d/b/a Broadmoor Valley,
Respondent,

Paul Milton Schierholz,
Respondent.

Filed August 10, 2026
Affirmed in part, reversed in part, and remanded
Schmidt, Judge

Lyon County District Court
File No. 42-CV-21-844

Keith Ellison, Attorney General, Bennett Hartz, Alex K. Baldwin, Jason Pleggenkuhle, Assistant Attorneys General, St. Paul, Minnesota (for appellant)

Alethea M. Huyser, Devin T. Driscoll, Nathan D. Converse, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondent Schierholz and Associates, Inc., d/b/a Broadmoor Valley)

Kevin C. Riach, The Law Firm of Kevin C. Riach, PLLC, Minneapolis, Minnesota (for respondent Paul Milton Schierholz)

Considered and decided by Beane, Presiding Judge; Smith, Tracy M., Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant, Minnesota Attorney General's Office (the state), sued respondents, Schierholz and Associates, Inc. and Paul Milton Schierholz (defendants), alleging nine claims concerning defendants' ownership and operation of a manufactured-home park in Minnesota. The state alleged that defendants: charged illegal fees, failed to maintain the park, failed to maintain the roads within the park, retaliated against tenants, and suppressed tenants' freedom of expression. Following a jury trial, the state prevailed on a portion of one of the nine claims. The jury returned defense verdicts on all other claims.

The state moved for a new trial. Schierholz and Associates moved for judgment as a matter of law on the state's partially successful claim. Defendants also moved for attorney fees under the Minnesota Equal Access to Justice Act, arguing that the state's claims were not substantially justified. The district court denied the state's motion for a new trial and defendant's motion for judgment as a matter of law. The district court granted the motion for attorney fees, awarding $981,273 in fees to defendants.

The state seeks review of the district court's order denying its motion for a new trial and the order awarding attorney fees. Defendant Schierholz and Associates cross-appealed, seeking review of the district court's order denying their motion for judgment as a matter of law. We affirm in part, reverse in part, vacate in part, and remand.

FACTS

Defendants own and operate Broadmoor Valley, a manufactured-home park in Marshall, Minnesota. In 2021, the state sued defendants under the Minnesota Attorney General's statutory authority. *See* Minn. Stat. Ch. 8 (2020).

The state's complaint asserted nine claims: (I) charging illegal late fees (Minn. Stat. § 504B.177(a) (2024)); (II) failure to maintain the roads (Minn. Stat. § 327.20, subd. 3 (2024)); (III) failure to maintain the park (Minn. Stat. § 327.20, subd. 1(1) (2024)); (IV) charging other illegal fees (Minn. Stat. § 327C.03, subd. 1 (2024)); (V) engaging in fraud, false pretenses, false promises, misrepresentation, misleading statements, and deceptive practices in violation of the Minnesota Consumer Fraud Act (Minn. Stat. § 325F.69, subd. 1 (2024)); (VI) violating the Minnesota Uniform Deceptive Trade Practices Act by engaging in deceptive and fraudulent conduct (Minn. Stat. § 325D.44, subd. 1 (2024)); (VII) retaliation (Minn. Stat. § 327C.12 (2024)); (VIII) prohibiting the tenant association's freedom of expression (Minn. Stat. § 327C.13 (2024)); and (IX) engaging in unlawful security-deposit practices (Minn. Stat. § 504B.178, subds. 1, 2 (2024)).

The state's complaint contained many allegations about the decay and disrepair that the park fell into, including the following: the park's dilapidated state creates an unsafe, unhealthy, and undignified living conditions for the residents; vacant homes in the park have been boarded up; homes have shattered windows, broken water pipes, exposed wires, holes in the floor or exterior walls, missing skirting, no siding, and other problems; overgrown plants, garbage, and debris surround several homes; an electrical fire started in a vacant home because the wiring was not up to code; homes are infested with feral cats, skunks, rodents, and other wild animals that leave feces and dead prey, the park's storm shelter is not maintained by defendants in a clean, orderly, and sanitary condition.

The state also alleged that defendants failed to maintain the park's roads. The complaint alleged that the roads were so deteriorated that school buses refuse to enter the park because the roads posed a safety risk to the children and could damage the buses. The state also alleged that defendants fail to plow the roads when it snows.

After discovery, the state moved for summary judgment on all counts and defendants moved for partial summary judgment. The district court denied the state's motion. The district court granted defendants' motion, in part, dismissing counts IV (illegal fees), VI (deceptive trade practices), and IX (unlawful security deposit practices).

The remaining counts proceeded to trial. After opening arguments and a chambers conference, the district court took judicial notice—and informed the jury—of a previous, unsuccessful lawsuit brought against defendants by Residents United, the park's tenant association. The state moved for a mistrial, arguing that the district court's decision to take judicial notice of the unsuccessful outcome of the Residents United lawsuit prejudiced the jury against the state's case. The district court denied the state's motion for a mistrial.

Before the jury deliberated, defendants moved to dismiss count VII (retaliation) based on misstatements of the evidence and the law in the state's closing argument. The district court granted defendants' motion and dismissed count VII (retaliation). The court also determined that the state misstated the law and the evidence multiple times in its closing argument, reasoned that no corrective instruction could adequately cure the state's errors and told the jury to disregard the state's entire closing argument.

The jury returned defense verdicts on all counts except for part of count III (park conditions). On count III, the jury found in favor of the state against only Schierholz and Associates, not against defendant Paul Milton Schierholz. Two days later, the district court entered judgment on the jury's verdict.

A few weeks later, the state filed an informal letter requesting a stay of judgment. The state's letter indicated that it intended to file a motion, under Minnesota Rule of Civil Procedure 52.02, for an amended judgment that addressed the remedies on the state's favorable verdict on count III (park conditions) against Schierholz and Associates. The district court stayed entry of judgment for 30 days but noted that the state could not bring a rule 52.02 motion because "[r]ule 52.02 does not apply to cases tried to a jury." The district court also noted that the state was "given an opportunity to request relief immediately after the reading of the special verdict" but did not do so.

The state moved for a new trial and judgment as a matter of law. The district court denied the state's motions.

Defendant Schierholz and Associates moved for judgment as a matter of law on count III (park conditions), which the district court denied. Defendants also moved for attorney fees under the Minnesota Equal Access to Justice Act, which the district court granted after determining that the state's claims were not substantially justified. The court awarded defendants $981,273 in attorney fees.

The state appeals and defendants cross-appeal.

DECISION

The state challenges the district court's orders denying its motion for a new trial and awarding fees to defendants. Defendant Schierholz and Associates' cross-appeal challenges the order denying the motion for judgment as a matter of law on count III (park conditions). We begin with the state's appeal and then turn to defendant's cross-appeal.

I. The state's appeal

The state asks us to: (A) reverse the district court's post-trial order and remand this case for a new trial on count II (road conditions), count V (consumer fraud), count VI (deceptive trade practices), count VII (retaliation), and count VIII (free expression); (B) remand for a determination of the equitable remedies for the state's successful verdict on count III (park conditions); (C) reverse the district court's order denying the state's motion for summary judgment on count I (late fees) and remand to determine equitable remedies on that claim; (D) vacate the district court's attorney fees award; and (E) order that this matter be assigned a new judicial officer on remand.

After a thorough examination of the record and applicable legal authority, we conclude that the district court abused its discretion when it denied portions of the state's motion for a new trial. Because we reverse and remand several of the state's claims for a new trial, we also vacate the order determining that the state's claims were not substantially justified and awarding attorney fees to defendants. We, however, affirm the district court's ruling dismissing count VII (retaliation) and striking the state's closing argument. We decline to address the state's other arguments as they are rendered moot by our decision. Our reasoning is detailed below.

A. The district court abused its discretion when it denied the state's motion for a new trial.

The state argues the district court abused its discretion by denying its motion for a new trial. We agree with some, but not all, of the state's asserted grounds for a new trial.

We review a district court's order denying a motion for 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 by "making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted). In addition to demonstrating an abuse of discretion occurred, the state must also demonstrate prejudice. *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 419 (Minn. App. 2010).

The state asserts that it is entitled to a new trial because the district court committed multiple legal errors and abused its discretion in the order denying the new trial motion. We start with the alleged legal errors, then turn to the discretionary rulings.

1. Some of the rulings challenged by the state require a new trial.

The state argues that the district court committed the following reversible errors that require a new trial: (a) applying the wrong statute of limitations to count II (road conditions) and count V (consumer fraud); (b) improperly adding common-law fraud elements to count V (consumer fraud); and (c) dismissing count IV (deceptive trade practices). We address each argument in turn.

a. The district court applied the wrong statute of limitations to two of the state's claims.

The state argues that the district court erred by applying a two-year statute of limitations to count II (road conditions) and count V (consumer fraud) and limiting the evidence that the jury could consider for those claims to a two-year timeframe. We agree.

We review de novo a district court's determination related to a statute of limitations. *Ford v. Minneapolis Pub. Sch.*, 874 N.W.2d 231, 232 (Minn. 2016). A six-year statute of limitations applies to claims under Minnesota's consumer-protection statutes. *See* Minn. Stat. § 541.05, subd. 1(2) (2024) (providing that actions on liability created by statute, other than those arising on a penalty or forfeiture, "shall be commenced within six years"). A two-year statute of limitations applies to actions on liability created by a statute arising on a penalty. *See* Minn. Stat. § 541.07 (2024) (providing that actions on liability created by statute arising on a penalty "shall be commenced within two years").

The district court determined that count II (road conditions) and count V (consumer fraud) are penal in nature and, thus, were governed by a two-year statute of limitations. That ruling contravened our prior decisions, which hold that consumer-protection claims, like the state alleged here,[1] are "not penal in nature" and, thus, are "not subject to the two-year limitations period of Minn. Stat. § 541.07(2)." *See Est. of Riedel by Mirick v. Life Care Cmtys, Inc.,* 505 N.W.2d 78, 83 (Minn. App. 1993). Instead, "actions brought under the Consumer Fraud Law are subject to a six-year limitations period[.]" *Id.*

[1] *See* Minn. Stat. § 327.20, subd. 3 (manufactured-home-park road maintenance); Minn. Stat. § 325F.69, subd. 1 (consumer fraud).

Accordingly, the district court erred when it concluded that the state's claims were penal in nature and applied a two-year statute of limitations, rather than a six-year limitation, to the state's claims for count II (road conditions) and count V (consumer fraud).

We must next consider whether the error prejudiced the state. As to count II (road conditions), the special verdict form asked the jury to consider the evidence within a two-year timeframe. The jury was required to disregard any evidence that occurred outside of that two-year timeframe. Given that the jury was limited to considering the park's road conditions within a two-year timeframe, the statute-of-limitations ruling prejudiced the state as to count II (road conditions). *See Staffing Specifix, Inc., v. TempWorks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 694 (Minn. 2018) ("[a] jury instruction is prejudicial if a more accurate instruction would have changed the outcome in the case" (quotation omitted)). We, therefore, reverse and remand for a new trial on count II (road conditions).

As to count V (consumer fraud), the special verdict form did not limit the jury's consideration of the evidence to a specific timeframe. Instead, the jury was able to consider all of the evidence presented. The state was not, therefore, prejudiced by the statute-of-limitations ruling as to count V (consumer fraud). We, therefore, do not remand that claim based upon the erroneous statute-of-limitations ruling.[2]

[2] We hold below that the district court erred by adding elements to count V (consumer fraud) and that the error requires a new trial. At the new trial on this claim, the admission of evidence—and the potential calculation of remedies—must be based upon the six-year statute of limitations.

b. The district court improperly added common-law fraud elements to the state's statutory consumer-fraud claim.

The state argues that for count V (consumer fraud), the district court improperly "required the State to prove factual elements not in [the] statute, creating a much higher burden of proof than the [Act] requires." We agree.

We review the denial of a new-trial motion based on an alleged "erroneous jury instruction for an abuse of discretion." *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 619 (Minn. 2022). "Erroneous jury instructions warrant a new trial when the instructions result in substantial prejudice." *Staffing Specifix, Inc., v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115, 132 (Minn. App. 2017), *aff'd* 913 N.W.2d 687 (Minn. 2018). "If a jury instruction is erroneous and an appellate court is unable to determine whether the error affected the jury, a new trial should be granted." *Id.*

The Minnesota Consumer Fraud Act prohibits:

> [1] The act, use, or employment by any person of any fraud, unfair or unconscionable practice, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with [2] the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoinable[.]

Minn. Stat. § 325F.69, subd. 1. As relevant here, there are two elements to the state's claim under the Minnesota Consumer Fraud Act: (1) the use of false information, with (2) the intent that others would rely on the false information. *Id.*

The district court instructed the jury on count V (consumer fraud) as follows:

> [The state] alleges that Defendant's late fee lease provisions violate the Consumer Fraud Act.

> "Consumer fraud" occurs when a person or business, in the course of selling goods and services *knowingly*:
>
> 1. Uses false information, and
>
> 2. Intends that others would rely on the false information.
>
> If you find that a consumer fraud occurred, you must also determine if:
>
> *1. The residents relied and acted on the false information, and*
>
> *2. The false information harmed the residents.*

(Emphasis added.) The jury instructions improperly included the common-law fraud elements of knowledge, reliance, and harm, which are not found in the Minnesota Consumer Fraud Act. *See* Minn. Stat. § 325F.69, subd. 1.

The supreme court has noted that the "legislature clearly intended to make it easier to sue for consumer fraud" by enacting the Minnesota Consumer Fraud Act. *State by Humphrey v. Alpine Air Prod., Inc.*, 500 N.W.2d 788, 790 (Minn. 1993). The supreme court concluded that the legislature's intent "is evidenced by the *elimination* of elements of common-law fraud, such as proof of damages or reliance on misrepresentation." *Id.* (emphasis in original). Thus, the district court erred in instructing the jury on count V (consumer fraud) by improperly including elements of knowledge, reliance, and harm.

We must next determine whether the error prejudiced the state. *See Staffing Specifix, Inc.*, 913 N.W.2d at 694. "A jury instruction is prejudicial if a more accurate instruction would have changed the outcome in the case." *Id.*

Question 4A of the special verdict form for count V (consumer fraud) asked the jury, "[d]id [defendants] *knowingly* provide false information in the course of selling goods or services to [park] residents?" (Emphasis added.) The jury answered "No." The jury followed the form's instructions, did not answer the remaining questions as to count V (consumer fraud), and moved to the next question on the special verdict form that asked about a different claim. Without the improper elements of knowledge, reliance, and harm, the jury may have answered the remaining questions on the special verdict form. Thus, we conclude that the district court's error was prejudicial and warrants a new trial.

c. The district court erred when it dismissed the state's deceptive-trade-practices claim.

The state challenges the dismissal of count VI (deceptive trade practices), arguing that the district court erred in dismissing the claim on summary judgment. We agree.

We review a district court's summary judgment order de novo. *Thormodson v. Zehnder*, 30 N.W.3d 807, 813 (Minn. App. 2025). "Consumer-protection statutes," like the Minnesota Deceptive Trade Practices Act, "are remedial in nature" and "liberally construed in favor of protecting consumers." *Liabo v. Wayzata Nissan, LLC*, 707 N.W.2d 715, 724 (Minn. App. 2006), *rev. denied* (Minn. Mar. 28, 2006); *see also State by Humphrey v. Phillip Morris, Inc.*, 551 N.W.2d 490, 496 (Minn. 1996) (noting that the Minnesota Deceptive Trade Practices Act is "very broadly construed to enhance consumer protection"). Minnesota's consumer-protection statutes are commonly read together "to prohibit the use of deceptive and unlawful trade practices." *Liabo*, 707 N.W.2d at 724.

The Minnesota Deceptive Trade Practices Act provides, in relevant part, that:

> A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person: . . .
>
> (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
>
> . . . .
>
> (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ;
>
> . . . .
>
> (7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; [or]
>
> . . . .
>
> (14) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

Minn. Stat. § 325D.44, subd. 1.

Here, count VI (deceptive trade practices) alleges that defendants made multiple misrepresentations to tenants about the legality of several lease provisions. The state alleged that defendants violated the Minnesota Deceptive Trade Practices Act by

> a. Misrepresenting to [park] residents that landlords can charge late fees in excess of eight percent when they pay their rent late, when in reality the law forbids [defendants] from charging more than eight percent of the overdue rent amount as a penalty for paying late;
>
> b. Misrepresenting to [park] residents that they owed a late rent fee when they did not;

c. Misrepresenting to [park] residents that a manufactured housing park owner can charge fees, which were not exempted by sections 327C.03 or 327C.04, other than the periodic rental payment for the right to obtain or retain a lot;

d. Misrepresenting to [park] residents that [defendants] would trim trees on lots as needed, while [defendants] refused and told consumers it was their responsibility to do so; and

e. Misrepresenting to [park] residents that a manufactured housing park owner can impose capital improvement assessments on the tenants.

The state's claims are allegations of "deceptive and unlawful trade practices," such as those the legislature sought to prohibit by enacting the Deceptive Trade Practices Act. *See Liabo*, 707 N.W.2d a 724. And there is no dispute that any representations that defendants made to tenants about the leases were "in the course of [defendants'] business[.]" Minn. Stat. § 325D.44, subd. 1. Thus, the state's claim falls well within the scope of the statute.

The district court dismissed the claim after determining that "[t]here is no binding precedent that expands the deceptive trade practices to apply to residential leases, or leases involving manufactured home communities." Although no case has expressly held that the Minnesota Deceptive Trade Practices Act applies to residential leases, there is precedent applying other consumer-protection statutes to residential leases. *See, e.g.*, *Love v. Amsler*, 441 N.W.2d 555 (Minn. App. 1989) (holding Prevention of Consumer Fraud Act applies to deceptive landlord practices under residential leases), *rev. denied* (Minn. Aug. 15, 1989); *State by Ellison v. HavenBrook Homes, LLC*, 996 N.W.2d 12 (Minn. App. 2023) (affirming exercise of personal jurisdiction in case bringing consumer-fraud and deceptive-trade-practices claims against rental-property owner), *rev. denied* (Minn. Jan. 16, 2024); *Thompson v. St. Anthony Leased Housing Assocs. II, LP*, 979 N.W.2d 1 (2022) (concluding tenant had standing to bring consumer fraud and deceptive-trade-practices claims against landlord). Given that the Minnesota Consumer Fraud Act and the Minnesota Deceptive Trade Practice Act "are commonly read together," *Liabo*, 707 N.W.2d at 724, we have no difficulty doing so in this case.[3]

The district court erred by dismissing the state's claim based upon a lack of binding precedent applying the statute to leases. This is not a circumstance where the district court properly refused to recognize a new tort under the common law. *See, e.g.*, *Glorvigen v. Cirrus Design Corp.*, 796 N.W.2d 541, 557 (Minn. App. 2011) (concluding that "it is not the function of the district court to establish new causes of action, even when such actions appear to have merit"). Unlike recognizing a new common-law claim, the statute provided the basis of the state's claim. The district court was fully equipped to analyze a statute and determine whether these facts fall within the claim that the legislature created. *See Village Lofts at Saint Anthony Falls Assoc. v. Hous. Partners III-Lofts, LLC*, 937 N.W.2d 430, 435-41 (Minn. 2020) (analyzing whether plaintiff presented valid statutory claims); *see also State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013) (holding whether alleged conduct meets the statutory definition of a particular offense is reviewed de novo). We, therefore, reverse and remand count VI (deceptive trade practices) for a new trial.

---

[3] We also note that the Minnesota Deceptive Trade Practices Act has no exemptions for residential leases, but has carved out exemptions for other charged fees. *See* Minn. Stat. § 325D.44, subd. 1b(1)-(3) (2024). The lack of exemptions for residential leases furthers our conclusion that the Act applies to residential leases under these facts.

2. The state is not entitled to a new trial based on its challenges to the district court's discretionary rulings.

The state argues that the district court abused its discretion in making the following rulings: (a) dismissing count VII (retaliation) due to misconduct by the state; (b) striking the state's entire closing argument, which the state contends on appeal prejudiced its case as to count VIII (free expression); (c) excluding the state's preliminary engineering report; and (d) disclosing the outcome of the residents' prior lawsuit to the jury.

A district court abuses its discretion if its findings are unsupported by the record or if it improperly applies the law. *Woolsey*, 975 N.W.2d at 506. Even when a district court abuses its discretion, the party seeking a new trial must show prejudice. *Lundman v. McKown*, 530 N.W.2d 807, 829 (Minn. App. 1995), *rev. denied* (Minn. May 31, 1995).

a. The district court did not abuse its discretion when it struck the state's retaliation claim.

The state argues that the district court abused its discretion when it struck count VII (retaliation) based upon misconduct by the state. We disagree.

The court cited rule 41.02(a) as authority for dismissing the state's claim. The rule provides that a district court "may upon its own initiative, or upon motion of a party, and upon such notice as it may prescribe, dismiss an action or claim for failure to prosecute or to comply with these rules or any order of the court." Minn. R. Civ. P. 41.02(a).

In exercising its authority under the rule, the district court found that the state's closing argument materially misstated evidence as to the allegations of retaliation against the residents. The court found that the misstatements included referencing evidence that was excluded as hearsay, improperly characterizing evidence as "an eviction threat," and misstating evidence about the retaliation claim related to the residents' prior lawsuit. The district court granted defendants' motion to dismiss the retaliation claim because the state "materially misstated evidence as to each of the three retaliation claims[.]"

On the state's motion for a new trial, the district court addressed the issue a second time. The court determined that the state "made material misstatements as to each of the three retaliation claims" and that the "pattern of misconduct by [the state] was such that a curative instruction would not remedy the cumulative prejudicial effect."

On appeal, the state quotes the closing argument and cites to the trial record to argue that there were no misstatements or mischaracterizations of evidence. The state asks us to analyze each word of their closing argument under a microscope and weigh whether any phrases or sentences crossed the line. Although the state's brief offers compelling arguments, our review of the record reveals that the state has not established that the district court clearly erred in its findings or otherwise abused its broad discretion by invoking rule 41.02(a) to dismiss count VII (retaliation).

b. The state has not demonstrated prejudice based on its free-expression claim from the district court's decision to strike the state's entire closing argument.

The state challenges the district court's decision to strike the state's entire closing argument, contending that the ruling prejudiced the state in its presentation of its claims beyond count VII (retaliation). We need not address whether the district court's decision to strike the state's closing argument prejudiced those claims for which we are remanding for a new trial. The state will have the opportunity to present a closing argument on those claims at the new trial. We, therefore, limit our analysis of the state's argument regarding the striking of its closing argument to those claims for which we have not otherwise concluded that the state is entitled to a new trial—that is, count VIII (free expression).

"[C]ounsel are entitled wide latitude in their final arguments to the jury, [but] this wide latitude is not without limitations." *Malik v. Johnson*, 219 N.W.2d 631, 638 (Minn. 1974) (citations omitted). The district court bears the "primary responsibility to determine the line between legitimate advocacy and unfair overreaching." *Ecklund v. Lund*, 222 N.W.2d 348, 351 (Minn. 1974). The supreme court has "held that prejudicial remarks in closing argument can be corrected by a curative instruction except in the case of the most extreme misconduct." *Bisbee v. Ruppert*, 235 N.W.2d 364, 370 (Minn. 1975). A "court's response to improper remarks in closing argument is governed by no fixed rules but rests almost wholly in its discretion." *Poston v. Colestock*, 540 N.W.2d 92, 93 (Minn. App. 1995) (quotation omitted), *rev. denied* (Minn. Jan. 25, 1996).

The state's closing argument related to count VIII (free expression) consisted of the following:

> Now finally, the State has proven that the Defendants illegally prohibited [a resident] from exercising her legal right to free expression within the park. They did this by telling her that she was completely banned from coming in. This was a violation of a right that we all have. This is a legal right in Minnesota to organize, to assemble, to door knock, to hand out leaflets and to otherwise enjoy our right to peaceful expression within manufactured home parks just like everywhere else. Now [the resident] testified that in 2018 she started volunteering at the park, helping residents go door-to-door to talk to their neighbors about their concerns and to collect

> signatures to form the resident association, and then Mr. Schierholz found out . . . Mr. Schierholz sent [the resident] a letter saying she was trespassing and that she was not allowed . . . to come into the park. Mr. Schierholz then sent a letter to [the resident's] attorney . . . claiming that she had illegally trespassed by coming into the park. Mr. Schierholz confirmed on the stand that he thinks it is within his power as owne[r] to do this. He said, I can ban any non-resident from coming into the park; but as the [district court] will instruct you, that's not what the law says. Park owners can't ban anyone from exercising free expression within the park. [The resident] was asked whether Mr. Schierholz'[s] ban stopped her from entering the park and she said, no, I know my rights. Now the Defendants seem to think that that ins—absolves Mr. Schierholz of breaking the law and it doesn't. Now let's look at that verdict form you're gonna be asked whether [defendants] prohibited free expression at [the park], the clear answer is yes. [Defendants] told [the resident] that she was banned from the park completely. Now there are two other questions . . . The two other questions were, was this a reasonable limit on the time, place and manner of the expression; meaning you're only banned in the park on weekends, or you can't come to the—on to this road, um, or you can come into the park, but you can't say this; no, you—it said you are banned from coming into the park, it is a total ban. There was no limit at all, much less a reasonable limit.

Even if the district court abused its discretion by striking the entire closing argument, we conclude that the state was not prejudiced as to count VIII (free expression). The state identified no other errors with regard to count VIII, which demonstrates that the state presented its full evidence to the jury as to this claim. The lack of closing argument, by itself, does not demonstrate prejudice because the jury was appropriately instructed that an attorney's statements are not evidence. Since the state does not identify how the district court's decision to strike the closing prejudiced the state for this count, we affirm the district court's decision to strike the state's closing argument as it relates to count VIII.

c. We decline to address the state's arguments challenging the district court's other discretionary rulings.

The state challenges several of the district court's other discretionary rulings, including: the exclusion of an engineering report and related testimony and taking judicial notice of the outcome of the Residents United lawsuit. Because the district court's rulings were specific to this trial and because we are remanding for a new trial, we decline to consider the state's arguments on these issues. On remand, the district court will have the discretion to reconsider any of these issues at the new trial.

B. The state is entitled to equitable remedies on its successful claim.

The state argues that the district court committed reversible legal error when it prevented the state from seeking equitable remedies on count III (park conditions), for which the jury returned a partial verdict in the state's favor. We agree.

To provide context for our analysis, we first summarize how the parties and the district court approached this claim before and after trial. Before trial, the district court divided the state's claim to have the jury only resolve the question of liability. As reflected in the special verdict form, the jury was not asked to decide the question of remedies should it find the defendants liable. When the jury rendered its verdict, it found part of count III (park conditions) in the state's favor by finding defendant Schierholz and Associates liable. After the verdict, the following exchange took place:

> THE COURT: At this time, I'll hear comment about, uh, next, uh, steps, uh, first counsel for [the state].
>
> STATE: Uh, none that I'm aware of Your Honor.

> . . . .
> THE COURT: Okay, um, do, uh, the parties want to set some dates or deadlines for, um, briefing or—
>
> STATE: I think we'd have to get back to you about what that briefing would even be.
>
> THE COURT: Okay, all right. Then, um, if there's nothing either, uh [the state] or [defendants] wish to bring to my attention, then, um, we will adjourn for the evening.

The district court ordered entry of judgment on the jury's verdict two days after trial ended. Two-and-a-half weeks later, the state sent a letter to the district court requesting that the district court stay entry of judgment. The state argued it was entitled to remedies after the jury found that defendant Schierholz and Associates "engaged in unlawful practices in business, commerce or trade pursuant to Minnesota Statutes section 8.31 and controlling caselaw." The state asserted that it intended to move for an amended judgment under Minnesota Rule of Civil Procedure 52.02 to address the question of remedies.

After an informal telephone conference, the district court stayed entry of judgment for 30 days. In its order, the district court noted that the state could not bringing a rule 52.02 motion because the rule "does not apply to cases tried to a jury." The district court declined to fashion remedies on count III (park conditions) because the state failed to "request relief immediately after the reading of the special verdict[.]"

But there is no rule requiring the state to move the district court to exercise its equitable powers after the jury found Schierholz and Associates liable. *See State v. Alpine Air Prods., Inc.*, 490 N.W.2d 888, 895 (Minn. App. 1992) (holding an attorney general consumer-protection action seeking injunctive relief, restitution, civil penalties, and costs and fees is entirely equitable in nature), *aff'd* 500 N.W.2d 788 (Minn. 1993). In fact, caselaw dictates that the state had no capacity to direct the district court to exercise its equitable powers. *See St. Jude Med., Inc. v. Carter*, 913 N.W.2d 678, 684 (Minn. 2018) ("The decision to exercise equitable powers belongs to the court . . . parties do not have the capacity to direct the court's exercise of equitable powers."). The district court abused its discretion by placing the onus on the state before the court exercised its equitable powers.

Instead, under these specific facts, the district court split the state's claim by asking the jury to only resolve the question of liability. The district court acted well within its discretion by splitting the claim. *See Olson v. Synergistic Techs Bus. Sys., Inc.*, 628 N.W.2d 142, 153 (Minn. 2001) ("a district court has the discretion to decide whether the fact finder in an equitable action will be the judge or a jury"). But, in doing so, the district court accepted the responsibility of resolving, if necessary, the issue of remedies.

After the jury found the defendant liable for violating the statute, the district court abused its discretion by failing to decide the question of remedies. Since the issue of remedies was never presented to the jury, per the district court's pre-trial ruling, the district court was required to either hold a bench trial on remedies if fact questions needed to be resolved or to fashion remedies based upon the facts already presented. *See* Minn. R. Civ. P. 39.01 ("Issues of fact not submitted to a jury as provided in Rule 38 shall be tried by the court."); Minn. R. Civ. P. 52.01 ("In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment."). We, therefore, reverse and remand for the district court to exercise its equitable powers and fashion appropriate remedies for the state's successful verdict on its park-conditions claim.

C. The district court erred in denying the state's motion for summary judgment on count I (late fees).

The state argues that the district court erred when it denied its motion for summary judgment as to count I (late fees). We agree.

Typically, "[t]he district court's denial of a motion for summary judgment is not within the scope of review on appeal from a judgment entered after a jury verdict." *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 912 (Minn. 2009) (syllabus). But an exception to this rule authorizes appellate review if the denial of summary judgment is "based on a legal conclusion on an issue that is not presented to the jury for determination." *Id.* at 918 n.9; *see also Schmitz v. Rinke*, 783 N.W.2d 733, 735 (Minn. App. 2010) ("[o]n appeal from the grant of judgment as a matter of law at the close of the plaintiff's case in chief, a district court's denial of a pretrial motion for summary judgment is within the scope of appellate review when the denial of summary judgment was based on a question of law") (syllabus), *rev. denied* (Minn. Sept. 21, 2010). That exception applies here.

The state's complaint as to count I alleges that the defendants charged late fees over eight percent in violation of Minnesota law. Minn. Stat. § 504B.177(a) (allowing landlords to charge late fees on rent payments, but "[i]n no case may the late fee exceed eight percent of the overdue rent payment"). The district court's order denying the state's motion for summary judgment notes that "[d]efendants do not dispute that they have charged late fees in excess of [eight percent] for residential buildings prior to [the] lawsuit." But the district court denied summary judgment by determining that "it is a question of fact as to whether any resident actually paid erroneously assessed late fees."

The district court erred in concluding that the statute required the state to prove that defendants actually collected a late fee in excess of the eight percent allowed by statute. Section 504B.177(a) prohibits charging late fees in excess of eight percent in one clause, and then explicitly distinguishes between the act of charging a late fee and collecting a late fee in the next sentence. *See* Minn. Stat. § 504B.177(a) ("In no case may the late fee exceed eight percent of the overdue rent payment. Any late fee charged or collected. . . . "). Instead of treating charging and collecting as two distinct acts—as required due to the statute's use of the word "or"—the district court conflated collection as part of the act of charging. Thus, the district court erred in determining that the statute required the state to prove that defendants collected a late fee over the eight percent allowed by statute.

After making that legal error, the district court denied summary judgment because issues of material fact existed—namely, whether anyone actually paid the late fee. But whether defendants collected on a late fee provision that charged over eight percent is not an issue of material fact that needed resolving. The legal analysis ends after the defendants admitted that they had *charged* late fees in excess of what the statute permits.

We, therefore, reverse the order denying the state's motion for summary judgment on count I (late fees). We remand for the district court to enter judgment in the state's favor on count I and to determine the state's remedies on this claim.

D. Given our decision, we vacate the order awarding attorney fees.

The state challenges the order awarding fees to defendants under the Minnesota

Equal Access to Justice Act. *See* Minn. Stat. § 15.472(a) (2022) ("If a prevailing party other than the state, in a civil action . . . brought by or against the state, shows that the position of the state was not substantially justified, the court . . . shall award fees."). Because we reverse and remand many of the state's claims for a new trial or for the district court to fashion remedies for claims upon which the state was successful, the question of whether the state's claims are "substantially justified" requires a new analysis after a new trial. We, therefore, vacate the district court's order awarding fees.[4]

II. Defendant Schierholz and Associates' cross appeal

On cross appeal, Schierholz and Associates challenges the district court's order denying its motion for judgment as a matter of law on count III (park conditions). Schierholz and Associates contends that section 327.20, subdivision 1(1) is unconstitutionally vague. We disagree.

"The constitutionality of a statute is a question of law that we review de novo." *State v. Ness*, 834 N.W.2d 177, 181 (Minn. 2013) (quotation omitted). "A statute can be unconstitutionally vague for either of two independent reasons[.]" *Id.* at 184. "First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits; and [s]econd, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Id.* (alteration in original) (quotation omitted). But "[w]e

---

[4] We decline to address the state's arguments that a new judge be assigned on remand because, as the state recognized, the judge who presided over the trial has sadly passed away since this appeal was filed.

exercise our power to declare laws unconstitutional with extreme caution and only when absolutely necessary." *Id.* at 182 (quotation omitted).

Minnesota Statutes section 327.20, subdivision 1(1) states that "[a] responsible attendant or caretaker shall be in charge of every manufactured home park or recreational camping area at all times, who shall maintain the park or area, and its facilities and equipment in a clean, orderly and sanitary condition." Minn. Stat. § 327.20, subd. 1(1); *see also* Minn. R. 4630.0300 (articulating the same). In resolving whether this statutory language is unconstitutionally vague, we look to the supreme court's decision in *State v. Reha*, 483 N.W.2d 688 (Minn. 1992) for guidance.

In *Reha*, the supreme court analyzed a city ordinance that, like the statute here, require Minneapolis properties be maintained in a "clean and sanitary condition." 483 N.W.2d at 689, 690-92. The supreme court concluded that the city ordinance was not unconstitutionally vague as applied, in part, because "most reasonable people could agree on an acceptable standard of 'clean and sanitary' in the context of a housing code ordinance." *Id.* at 692. The supreme court noted that fair warning was provided by the notice provisions built into the relevant ordinance code, and by the multiple written notices issued alerting Reha that she was in violation of the code. *Id.*

Following *Reha*, we similarly conclude that the language of this statute is not unconstitutionally vague. Section 327.20, subdivision 1(1) requires the park to be maintained in a "clean, orderly and sanitary condition." As the supreme court held when assessing similar language in *Reha*, "most reasonable people could agree on an acceptable standard of 'clean and sanitary' in the context of a housing code ordinance." *Id.*

Defendants assert that they received no fair warning that their conduct was unlawful. Defendants claim that when notice was given, they acted quickly to correct the unlawful conduct. But the evidence demonstrated that there were multiple Mobile Home/Recreational Camping inspections that reported the poor conditions of the park. The inspection reports invoked the administrative rule that receives its statutory authority from, and has the same requirements as, section 327.20. *See* Minn. R. 4630.0300. Defendants received fair warning that their conduct was unlawful under section 327.20.

Defendants insist that the statute was enforced in a discriminatory or arbitrary manner. The district court, however, acknowledged that "the investigation of Defendants began as a result of [the state's] duty to review a complaint or complaints from concerned citizens regarding [the park]." The supreme court similarly held that an ordinance is not arbitrarily enforced when the investigation into the property—and the subsequent enforcement of the code—began with a complaint filed by a citizen. *Reha*, 483 N.W.2d at 692. Enforcement was, therefore, not arbitrary or discriminatory, even if the lawsuit changed over time as defendants contend. We affirm the district court's well-reasoned decision that section 327.20, subdivision 1(1), is constitutional as applied to defendants.

Affirmed in part, reversed in part, and remanded.