This opinion is nonprecedential except as provided by Minn.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
A26-0009

In re the Estate of Kenneth L. Penttila, Deceased.

Filed August 3, 2026
Affirmed; motion denied
Bratvold, Judge

Dakota County District Court
File No. 19HA-PR-23-575

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Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Reilly, Judge.[*]

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant sister and respondent brother petitioned to remove respondent eldest brother as the personal representative of their father's estate. Before the district court ruled

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

on the removal petition, the parties entered into a binding mediated settlement agreement that required an independent financial review of eldest brother's management of the estate. After the financial review was completed, appellant moved to reopen probate proceedings on her petition to remove eldest brother as personal representative, which the district court denied.

Appellant seeks reversal of the district court order, arguing that eldest brother breached the settlement agreement because the financial review was not independent. The parties dispute some threshold issues, and eldest brother moves to strike an argument in appellant's primary brief. We deny the motion to strike and affirm the district court's order.

FACTS

The following summarizes the factual findings in the district court's order denying appellant Kristina Nairn's motion to reopen probate proceedings. The factual summary is supplemented by the record when helpful to understand the issues on appeal.

Kenneth Penttila died intestate in June 2023, survived by four adult children: Nairn and respondents Eric, Steven, and Kevin Penttila.[1] In August 2023, the district court appointed Eric as personal representative of Kenneth's estate. In July 2024, Steven petitioned the district court for Eric's removal as personal representative of the estate. Nairn

[1] Because several individuals share a last name, we refer to them by first name.

joined the removal petition in August 2024. Nairn alleged, among other things, that Eric had lost family heirlooms and sold an estate property at a loss.

The district court conducted an evidentiary hearing on the petition to remove Eric, receiving testimony and other evidence in November and December 2024. The district court scheduled a third day of the evidentiary hearing for March 2025. In February 2025, the parties entered into a binding mediated settlement agreement.

The settlement agreement provided for a third party to conduct an "independent financial review" of the estate. Relevant to this appeal, the settlement agreement stated: "The Estate will engage Boulay Financial Advisors ('Boulay') to review the financial records of the estate and determine whether the estate has been managed according to general accepted estate management practices as determined in Boulay's discretion." The settlement agreement also included provisions on the scope of financial review, Boulay's authority and discretion, and the parties' obligations in furthering the financial review. In particular, the settlement agreement stated:

> (a) The amount that the Estate will pay will be capped at $20,000 . . . .
>
> (b) Boulay will exercise its own discretion to determine what it needs to do to review the Estate's financials. Boulay will be able to speak to any party, any third party, or any attorney for any party at its discretion.
>
> (c) Boulay will be able to request documents from any party and each party will cooperate to provide any requested documents.
>
> (d) Boulay will be able to request documents from any [certified public accountant] or financial institution. If

> necessary the personal representative will authorize Boulay to seek any documents it requests.
>
> (e) All parties will be bound by any conclusion reached by Boulay with regard to whether the estate has been managed with generally accepted estate management practices.

The settlement agreement also provided for "broad general releases" and "dismissal of claims" and stated that the "parties will reduce the agreement to a final written agreement." Under the settlement agreement, "[a]ny dispute over the terms of the final, written agreement will be submitted" to the mediator as the arbitrator.

Over the next few months, the parties negotiated but never agreed on the terms of a final, written settlement agreement.

In April 2025, the neutral submitted a report to the mediator (financial report). The financial report is in the form of a letter to the mediator, dated April 25, 2025, on stationery with the heading, "Andrew Kremer, attorney," and signed by Andrew Kremer, a certified public accountant and attorney. Kremer is a partner of Boulay Financial Advisors and is also associated with a law firm, Andrew Kremer Law.[2] Nairn later filed the financial report in district court in support of her motion to reopen.

The financial report stated that Eric's "actions throughout the administration of the Estate were consistent with the duties and reasonable discretion afforded to a personal

[2] The parties and the district court appear to refer to Kremer, Boulay, and "the Boulay reviewer" interchangeably. For clarity, we generally use the term "neutral," except when specifically discussing Nairn's argument that Boulay did not perform the financial review as provided in the settlement agreement.

representative under Minnesota law." The financial report identified the materials that the neutral considered:

> - The probate documents filed with Dakota County, including the initial probate petition and related documents, subsequent petitions filed by [Nairn and Steven] and the responses thereto, and the estate inventory;
> - Relevant email correspondence between [Eric] and beneficiaries;
> - Documentation and summaries of estate assets, including probate and non-probate property;
> - Tax returns filed on behalf of the Estate and the decedent;
> - Estate account transaction detail from the checking and savings accounts;
> - A transcript of trial testimony from the real estate agent involved in the sale of the decedent's residence; [and]
> - The signed engagement letter outlining the agreed-upon scope and limitations of this review.

The financial report concluded that "some aspects of the [estate] administration understandably gave rise to disagreement" but that Eric's actions were "consistent with the responsibilities of a personal representative under Minnesota law."

In May 2025, Nairn moved to reopen probate proceedings "due to breach of the mediated [settlement] agreement." In a memorandum in support of her motion, Nairn asked the district court to rescind the settlement agreement and resume the evidentiary hearing. Nairn argued that Eric's removal as personal representative was "in the best interests of the estate." Nairn stated that, in communications with Eric, she "sought contact information" for the neutral and "a copy of [the neutral's] engagement agreement." Nairn added that Eric did not provide the requested information and "caused the [financial] review to be completed before the parties even agreed to the final language of the settlement agreement."

Nairn contended that Eric's actions "deprived [her] of the opportunity to reach out to [the neutral]" and "prevented [the neutral] from giving full consideration to whether the information that [Nairn] had was relevant to its inquiry." Nairn also argued that Eric knew from her requests "that there was a dispute about the meaning" of the settlement-agreement provision that defined the financial review. Nairn added that "the parties had agreed to a process for resolving disputes" through the mediator, but that Eric "chose to instead push forward to complete the review of his conduct."

In August 2025, the district court held a hearing on Nairn's motion to reopen probate proceedings.[3] At the hearing, the district court ordered Eric's attorney to file a signed copy of the engagement letter between the estate and the neutral. The district court also ordered Eric to submit the materials reviewed by the neutral for the district court's in camera review.

Eric filed the engagement letter with the district court. The letter described the neutral's relationship to Boulay:

> I am a licensed and insured attorney providing Minnesota legal services through the independent law firm Andrew Kremer Law. I am also a Partner at Boulay, PLLP ("Boulay"), a certified public accounting and consulting firm. As a part of my legal practice, Boulay provides me with certain services (such as administrative support and billing, technology, professional staff on a contract basis, and use of Boulay's facilities).

[3] Steven, who first petitioned for Eric's removal, also joined in Nairn's motion to reopen and appeared at the hearing on the motion. But Steven raised issues distinct from those raised by Nairn. Steven argued that Eric mishandled the sale of an estate property in Montana. Steven did not appeal the district court's denial of the motion to reopen.

The letter stated that the neutral would “examine relevant documents” and that the scope of the neutral’s conclusions would “be limited to the documentation reviewed” and would “not constitute a legal opinion regarding any specific claims or potential causes of action.”

After the engagement letter was filed, Nairn’s attorney filed a written response in district court, arguing that Eric breached the settlement agreement by hiring the neutral’s law firm “instead of Boulay” and limiting the neutral’s review to the examination of relevant documents.

In November 2025, the district court denied Nairn’s motion to reopen probate proceedings. The district court concluded that the settlement agreement did not require the neutral to contact Nairn or receive documents from Nairn, nor did it give Nairn a “right to argue [her] position” to the neutral. The district court also concluded that “the investigation was sufficiently independent, and that no evidence has been provided suggesting that it was not.” The district court rejected Nairn’s argument that her request for the neutral’s contact information signaled a dispute over the terms of the settlement agreement that would have required submission to the mediator.

Nairn appeals.

DECISION

Nairn asks this court to reverse the district court’s denial of her motion to reopen, to rescind the settlement agreement, and to remand for further proceedings. Before we address Nairn’s arguments in support of reversal, we must resolve three threshold issues: Eric’s motion to strike arguments from Nairn’s primary brief, Nairn’s challenge to the district court's in camera review of materials considered by the neutral, and the parties' arguments on the applicable standard of review.

A. Eric's Motion to Strike

Eric moves this court to strike Nairn's argument in her primary brief that the neutral did not receive a copy of the settlement agreement. Eric argues that this "is a new argument that was not raised in the District Court proceedings and therefore cannot be raised on appeal." Alternatively, Eric offers an email from the mediator to the neutral. Eric acknowledges that the email was not filed in district court but argues that this court should consider the email "in the interests of fairness and justice." Eric contends that he "had no opportunity to dispel" Nairn's claim that the neutral did not receive the settlement agreement.

First, we do not consider the mediator's email that was not filed in district court because it is not in the record. *See* Minn. R. Civ. App. P. 110.01 (stating that the record on appeal includes "documents filed in the trial court"); *Grinolds v. Indep. Sch. Dist. No. 597*, 346 N.W.2d 123, 128 (Minn. 1984) ("Appellate review is limited to the record.").

Second, based on the hearing transcript, we conclude that Nairn's attorney explicitly argued that the neutral did not receive the settlement agreement. During the hearing on Nairn's motion to reopen, her attorney stated: "And most notably what is not listed as materials considered" in the financial report "is the actual binding agreement that allowed [the neutral] to reach out to any of the parties" and to "exercise its discretion to determine what needed to be done here." Nairn's attorney also stated that the neutral "was never given contact information for the parties." Because Nairn's attorney argued during the hearing that the neutral lacked the settlement agreement, we deny Eric's motion to strike.

B. In Camera Review

Nairn argues that the district court committed reversible error by conducting an in camera review of the materials considered by the neutral. Nairn contends that the district court's in camera review kept the neutral's materials out of the record and thereby "deprived [her] of her right to reasonable notice and an opportunity to be heard" as well as "frustrated" this court's ability to meaningfully review the district court's decision.

We need not consider this argument because Nairn raises it for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally will not consider matters not argued to and considered by the district court). Even if we were to consider this argument, we would conclude that Nairn had notice of and did not object to this procedure and therefore forfeited her challenge to the district court's in camera review of the neutral's materials.

Based on our review of the hearing transcript, Nairn received notice of the district court's in camera review during the hearing on her motion and did not object. Failure to object results in forfeiture of an issue. *Park Hill Apartments v. Anderson*, 409 N.W.2d 924, 925 (Minn. App. 1987) ("It has been clearly established that failure to object properly at trial prevents a party from raising an objection for the first time either on a motion for a new trial or on appeal.").

At the hearing on Nairn's motion to reopen, the district court asked that, if it "requested the file" containing the materials on which the neutral relied, "and if the file reveals that [the neutral] had contact information for everyone involved, then doesn't [the court's] order look stronger on appeal?" In response, Eric's attorney agreed to file the neutral's materials.

Nairn's attorney asked, "I would assume we all get a copy of [the neutral's materials] as well; correct?" Eric's attorney did not agree to sharing the neutral's materials with Nairn. The district court stated, "[A]t this point why don't we do it in camera." Nairn's attorney did not object and appeared to acquiesce: "Since this will be submitted in camera, will we be notified at a minimum of when it is submitted? I just want to know when it's taken under advisement." Eric's attorney agreed to notify Nairn's attorney by email when the neutral's materials were filed with the district court. Nairn's request for a submission date ended the discussion of in camera review.

Because Nairn did not object to the district court's in camera review of the neutral's materials when notified during district court proceedings, this issue is forfeited and we do not consider it further.

C. Standard of Review

The parties disagree regarding the applicable standard of review. Nairn argues that we should treat the district court's order as one "enforcing a settlement agreement" and view the evidence in the light most favorable to her. Nairn relies on *Voicestream Minneapolis, Inc. v. RPC Properties, Inc.*, in which the supreme court determined that "a district court shall treat a motion to enforce a settlement agreement as it would a motion for summary judgment, and explicitly grant or deny each claim." 743 N.W.2d 267, 273 (Minn. 2008). Eric argues that we must treat this matter "as an appeal of an order denying removal of the personal representative of the estate" and therefore apply an abuse-of-discretion standard.

First, *Voicestream* does not help us determine our standard of review because Nairn moved the district court to rescind the settlement agreement, not to enforce it. And the district court expressly denied Nairn's motion to reopen in a written order that included findings of fact. Findings of fact are not appropriate in deciding a motion for summary judgment. *Merle's Constr. Co. v. Berg*, 442 N.W.2d 300, 303 (Minn. 1989) ("On a motion for summary judgment . . . the trial court does not make findings of fact.").

Second, in a special-term order denying Eric's motion to dismiss the appeal, this court determined that the district court's order denying Nairn's motion to reopen "effectively denied Nairn's request to remove" Eric as personal representative of the estate and was thus "independently appealable under Minn. Stat. § 525.71(a)(2)." *See* Minn. Stat. § 525.71(a)(2) (2024) (listing an order "refusing to remove" a representative among orders from which appeal may be taken). Appellate courts review a district court's decision on the removal of a personal representative for abuse of discretion. *Est. of Martignacco*, 689 N.W.2d 262, 269 (Minn. App. 2004), *rev. denied* (Minn. Jan. 26, 2005).

We are unaware of any caselaw that specifically addresses the standard for reviewing the facts or evidence in a motion to *reopen* a probate case after the parties have agreed to settle it. But in an appeal from an order to distribute an estate after the parties had "renounce[d]" a settlement agreement, this court applied a clear-error standard of review to the district court's factual findings. *In re Est. of Simpkins*, 446 N.W.2d 188, 189-91 (Minn. App. 1989) (stating that this court's review is limited to whether "the probate court's findings are clearly erroneous"). This adheres to Minnesota Rule of Civil Procedure 52.01, which states that a district court's "[f]indings of fact . . . shall not be set aside unless clearly erroneous." *See also* Minn. Stat. § 524.1-304(a) (2024) (stating that the rules of civil procedure apply to probate proceedings "[u]nless inconsistent with the provisions" of the Minnesota Uniform Probate Code); *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) ("The clear-error standard of review is familiar because it applies across many contexts.").

We conclude that this court reviews the district court's factual findings for clear error and its ultimate decision on the motion to reopen probate proceedings for abuse of discretion. "We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *Kenney*, 963 N.W.2d at 221 (quotations omitted). An abuse of discretion includes "disregarding the facts." *Martignacco*, 689 N.W.2d at 269; *see also Simpkins*, 446 N.W.2d at 190 (stating that appellate review of a probate order includes whether the district court "erred in its legal conclusions").

D. Denial of Nairn's Motion to Reopen

Having decided the applicable standards of review, we consider the remaining issues raised in Nairn's appeal. Nairn argues that the district court erred in denying her motion to reopen because Eric materially breached the settlement agreement by (1) failing to provide the neutral's contact information and engagement letter to Nairn; (2) failing to provide Nairn's contact information and the settlement agreement to the neutral; and

(3) hiring Andrew Kremer Law instead of Boulay to perform the financial review. We discuss these arguments in turn.

"A settlement agreement is a contract." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 581-82 (Minn. 2010). Generally, "rescission of a contract is justified only by a material breach or substantial failure in performance." *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 49 (Minn. App. 1998). A breach of contract is material if it "goes to the essence of the parties' agreement, affecting the purpose of the contract in a vital way." *Kuhn v. Dunn*, 8 N.W.3d 633, 640-41 (Minn. 2024) (quotation omitted). Generally, whether a breach is material is a question of fact. *See Cloverdale*, 580 N.W.2d at 49-50 (stating that the "evidence was sufficient to raise a fact question regarding whether [the respondent] materially breached [a] lease agreement").

1. Failure to Provide Nairn with the Neutral's Contact Information and Engagement Letter

Nairn argues that Eric's failure to provide her with the neutral's contact information and engagement letter was a material breach of the settlement agreement's express terms. Alternatively, Nairn contends that Eric's failure to provide her with this information breached the implied covenant of good faith and fair dealing because Nairn reasonably expected that she "would have the ability to communicate with" the neutral.

At the outset, the district court determined that, "absent the finalized written settlement agreement, the Binding Mediated Agreement"—which this opinion calls the settlement agreement—"still governs." The parties do not challenge this determination on appeal.

The district court concluded that the settlement agreement's terms about communications between the parties and the neutral were unambiguous and "did not give [Nairn] the right to argue [her] position" to the neutral or "require the parties have [the neutral] on call to give their side of the story." The settlement agreement provides that "Boulay will be able to speak to any party, any third party, or any attorney for any party at its discretion." The district court concluded that the phrase "able to" is permissive and does not require the neutral to communicate with any party.

On appeal, Nairn does not contend that the settlement agreement is ambiguous. A contract is ambiguous "if it is susceptible to two or more reasonable interpretations." *Dykes*, 781 N.W.2d at 582. We conclude that the relevant terms of the settlement agreement are unambiguous and do not support Nairn's claim that she was entitled to contact the neutral or obtain the engagement letter. The relevant provisions state that the neutral may act in its discretion. The agreement is silent on the parties' right to contact the neutral. We will not "add words to an unambiguous contractual provision." *Kuhn*, 8 N.W.3d at 639 (quotation omitted). Therefore, Nairn's argument that Eric breached the settlement agreement's express terms by not providing her with the neutral's contact information is unavailing.

Alternatively, Nairn argues that Eric failed to provide her with the neutral's contact information and engagement letter and thereby frustrated her "reasonable expectation" that "the parties have equal access" to the neutral. Nairn maintains that Eric therefore violated the implied covenant of good faith and fair dealing. The district court did not address whether Eric breached the implied covenant of good faith and fair dealing.[4]

"Under Minnesota law, every contract includes an implied covenant of good faith and fair dealing requiring that one party not unjustifiably hinder the other party's performance of the contract." *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995) (quotation omitted). Nairn does not argue that Eric hindered her performance under the settlement agreement but still contends that the "good faith performance doctrine" protects her "reasonable expectations" that she be able to contact the neutral and receive the engagement letter.

We need not decide whether the implied covenant of good faith and fair dealing applies to acts that frustrate a party's reasonable expectations without hindering the party's contract performance. Nairn's expectation that she could contact the neutral was not reasonable. As discussed above, the settlement agreement is unambiguous and does not give Nairn the right to contact the neutral or to receive the neutral's engagement letter. We also reject Nairn's argument that Eric's involvement with the neutral created an "obvious inherent conflict." The settlement agreement's express terms allow Eric, as personal

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[4] In her motion to reopen, Nairn suggested that Eric breached "the duty of good faith and fair dealing" but did not articulate what conduct breached the duty or provide any argument or authority in support of the statement. Nairn is therefore raising a different theory on appeal, and we need not consider Nairn's argument. *See Thiele*, 425 N.W.2d at 582 (stating that a party may not "obtain review by raising the same general issue litigated below but under a different theory"). But because Eric does not object to Nairn's argument and it can be resolved on the record, we address it.

representative, to "engage" the neutral and "authorize" the neutral "to seek any documents it requests."

Because the unambiguous terms of the settlement agreement do not give Nairn a right to contact the neutral or obtain the engagement letter, nor do they support a reasonable expectation of such contact, we conclude that Eric did not breach the settlement agreement by failing to provide Nairn with the neutral's contact information or engagement letter.

2. Failure to Provide the Neutral with the Settlement Agreement and Nairn's Contact Information

Nairn argues that no evidence shows that the neutral received the settlement agreement or "had contact information" for anyone other than Eric, which was "a prerequisite to having the ability to contact" the other parties. Nairn contends that Eric undermined the neutral's independence because the neutral would have been unaware of his ability "to speak to any party, any third party, or any attorney for any party at [his] discretion" as provided in the settlement agreement. Nairn also maintains that the neutral was unable to contact Nairn or her attorney because Eric did not provide this information.

The district court concluded that the settlement agreement required "only that [the neutral] conduct an independent investigation," not that the neutral receive any specific information or contact any specific party. In other words, the district court determined that the neutral had discretion on the manner of conducting the investigation for the financial report.

We agree with the district court that the settlement agreement does not require that the neutral receive any particular information, including any party's contact information, or even the settlement agreement itself. Rather, the settlement agreement requires the financial review to be "independent." As for Eric's obligations under the settlement agreement, he was required to engage the neutral on the terms stated in the settlement agreement, to cooperate with the neutral to "provide any requested documents," and to authorize the neutral "to seek any documents it requests."

Nairn is correct that the materials listed in the financial report do not include the settlement agreement. But no evidence suggests that the neutral requested and did not receive the settlement agreement or any other information. The record shows that the neutral received information to conduct the financial review, as stated in the settlement agreement. Therefore, the district court did not clearly err in finding that the financial review was conducted independently, as required by the settlement agreement.

3. Retaining Andrew Kremer Law Instead of Boulay

Nairn argues that Eric "retained Andrew Kremer Law, not Boulay Financial Advisors as the parties had agreed," and that by "engaging someone else and by limiting the scope of the [financial] review," Eric breached the settlement agreement.[5]

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[5] Nairn does not articulate what substantive information the neutral should have had beyond what he identified in his report or which provision of the settlement agreement required review of additional information. Nor does Nairn explain how either the financial review process or its results are inconsistent with the neutral's discretion under the settlement agreement. Thus, because Nairn asserts error without argument, we need not further consider Nairn's claim that Eric breached the settlement agreement by "limiting the scope of the review." *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (stating that an assignment of error based on "mere assertion" is forfeited unless "prejudicial error is obvious on mere inspection").

The district court's order does not directly discuss Nairn's claim that Kremer is not the neutral identified in the settlement agreement. But the district court implicitly found that Boulay conducted the review. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (recognizing and deferring to the district court's implicit findings on witness credibility). The district court found that "Andrew Kremer submitted his completed report on behalf of Boulay," and the district court's order generally refers to "Boulay" and "Boulay's review" while also using Kremer's name interchangeably with Boulay.

The district court's implicit finding that Boulay conducted the financial review was not clearly erroneous. *See Vettleson v. Special Sch. Dist. No. 1*, 361 N.W.2d 425, 428 (Minn. App. 1985) (applying the clear-error standard to an implicit finding of fact). The engagement letter states that Kremer is a "Partner at Boulay," and the email address in the signature block is associated with the Boulay firm. This is reasonable evidence that Kremer conducted the financial review in his capacity as a Boulay partner. *See Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (stating that appellate courts, during clear-error review, examine the record for "reasonable evidence" supporting the district court's findings (quotation omitted)).

Even if we assume that the financial review was performed by Kremer or Andrew Kremer Law and not Boulay, Nairn's primary brief does not persuade us this was a material breach of the settlement agreement.[6] As discussed, a breach is material if it "goes to the

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[6] Nairn argues for the first time in her reply brief that engaging Kremer was an "independent material breach" because Kremer was acting as Eric's attorney. Generally, issues not raised or argued in appellant's principal brief cannot be raised in a reply brief. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010). Even so, Nairn's

essence of the parties' agreement, affecting the purpose of the contract in a vital way." *Kuhn*, 8 N.W.3d at 640-41. Even if we consider Nairn's argument that the financial review lacked independence because it was performed by Kremer, that argument is unavailing. As discussed above, the district court did not clearly err in finding that the financial review complied with the relevant terms in the settlement agreement. Thus, even if we assume that Eric's engagement of Kremer was a breach of the settlement agreement, this breach does not warrant rescission. *See Cloverdale*, 580 N.W.2d at 49 ("[R]escission of a contract is justified only by a material breach or substantial failure in performance.").

In sum, Nairn has not shown that the district court erred in determining that Eric did not materially breach the settlement agreement. Thus, we conclude that the district court did not abuse its discretion in denying Nairn's motion to reopen probate proceedings on her petition to remove Eric as personal representative of the estate.

Affirmed; motion denied.

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argument is not supported by the record. The neutral's report stated, "My role in this matter was not that of an advocate for any party," and that the financial review "was conducted impartially and with a professional understanding of a personal representative's obligations in an intestate estate of this nature and complexity." And nothing in the engagement letter establishes that Kremer was to act as Eric's attorney.