*This opinion is nonprecedential except as provided by*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**
**A26-0137**

Acoustics Associates, Inc.,
Respondent,

vs.

Rongitsch Construction, Inc., et al.,
Appellants.

**Filed August 24, 2026**
**Affirmed in part, reversed in part, and remanded**
**Connolly, Judge**

Dakota County District Court
File No. 19HA-CV-24-295

Aaron A. Dean, Madeline E. Davis, Matthew E. Cavanaugh, Spencer Fane LLP, Minneapolis, Minnesota (for respondent)

Tyson Smith, Richard T. Furlong III, Smith Law, PLLC, Grand Marais, Minnesota; and

Malcolm P. Terry, Bernick Lifson, PA, Minneapolis, Minnesota (for appellants)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Rasmusson, Judge.

**NONPRECEDENTIAL OPINION**

**CONNOLLY**, Judge

Following the district court granting summary judgment and awarding interest and attorney fees in favor of respondent, appellant argues that the district court erred by (1) resolving fact disputes; (2) awarding interest; (3) impliedly making appellantindividuals jointly and severally liable; (4) failing to dismiss respondent's unjust-enrichment claims; (5) not considering respondent's failure to mitigate damages; and (6) awarding attorney fees. We affirm in part, reverse in part, and remand.

**FACTS**

Appellant Rongitsch Construction Inc. (RCI) is a custom home builder and general construction contractor owned and operated by appellant Michael Rongitsch. Appellant Desiree Rongitsch "is an owner of RCI" and appellant Nate Rongitsch "is an employee of RCI."[1] Respondent Acoustic Associates, Inc. is an interior finish contractor and has been working as a subcontractor with RCI pursuant to an agreement signed in 2018 (the subcontractor agreement). The subcontractor agreement was restated in January 2022 (the independent-contractor agreement), and provides that RCI "shall from time to time request a written bid from [respondent] to perform . . . services."

In 2022 and 2023, RCI hired respondent to perform work on the following three projects: (1) the Beauty HQ Project; (2) the Erken Project; and (3) the Kelly Project. With respect to the Beauty HQ Project, respondent submitted a bid to perform the work for $8,450. Under the bid, the payment was due 30 days after completion of respondent's work, any unpaid balance outstanding for more than 60 days was subject to a 12% annual interest rate, and RCI was liable for respondent's collection costs and attorney fees. Although respondent's bid was not signed by an RCI representative, RCI instructed respondent to perform the work pursuant to the proposal.

---

[1] Because the Rongitsch parties share the same last name, they will be referred to individually by their first names.

Respondent also submitted a bid to perform the work for the Erken Project for $15,075. This bid contained terms for interest and fees that were identical to the bid for the Beauty HQ Project, but this bid was signed by RCI. And although there was no written bid related to the Kelly Project, respondent agreed to perform the services for $1,005.

It is not disputed that respondent finished the work for the three projects and issued final invoices for the projects. It is also not disputed that RCI has not paid respondent for the projects. As a result, respondent commenced this action against RCI, Michael, Nate, and Desiree (collectively "appellants") seeking payment for the three projects as well as interest and attorney fees. Specifically, respondent asserted claims for (1) breach of contract against RCI; (2) violation of Minn. Stat. § 337.10 (2024), against RCI; (3) theft of proceeds under Minn. Stat. § 514.02 (2024), against all appellants; (4) accounts stated against RCI; and (5) unjust enrichment against all appellants.

Respondent moved for summary judgment. Following a hearing, the district court granted respondent's motion for summary judgment, concluding that respondent "is entitled to the principal balance for all three contracts." The district court also determined that respondent "is entitled to attorney[] fees, interests, costs, and disbursements for all three contracts at issue." With respect to the Erken Project and the Beauty HQ Project, the district court determined that, pursuant to the written bids, respondent is entitled to interest calculated at a rate of 12% from 60 days after the date the first invoice for the two projects was sent to RCI. And because there was "no written bid" for the Kelly Project, and the independent-contractor agreement "is silent on [the interest] issue," the district court determined that, under Minn. Stat. § 337.10, subd. 3, respondent "is entitled to interest at

[a] 1.5% per month rate 10 days after the invoice was sent to RCI." The district court then directed respondent "to file an itemization and description of attorney[] fees and interest for the principal balances on the contracts," and later issued an order awarding respondent $24,530 for the principal amounts owed, $31,559.43 for attorney fees and costs, and $5,133.68 for interest.

After appellants filed an appeal in this matter, the appeal was dismissed as premature because the judgment had not been entered by the court administrator. The district court subsequently filed an order for judgment nunc pro tunc, directing the court administrator to enter judgment, and judgment was entered. This appeal follows.

## DECISION

Appellate courts review summary-judgment determinations de novo "to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). We view the evidence in the light most favorable to the party against whom summary judgment was granted. *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019). And we resolve all doubts and factual inferences in favor of the party against whom summary judgment was granted. *Id.* If "reasonable persons might draw different legal conclusions from the evidence presented, summary judgment must be denied." *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020).

### I.

Appellants assert that, since 2018, the relationship between RCI and respondent has been controlled by the subcontractor agreement, which "contains no fees or interest provision," and "requires written consent to be modified." Although appellants admit that the terms of the subcontractor agreement were modified as they related to the Erken Project, appellants contend that the district court impermissibly resolved factual disputes related to the Beauty HQ Project "by concluding that terms of th[at] agreement were represented by the unsigned bid."[2] We are not persuaded.

A contract, although unsigned, may still be enforceable if the parties have agreed to and acted in conformity with its terms. *Poser v. Abel*, 510 N.W.2d 224, 228 (Minn. App. 1994), *rev. denied* (Minn. Feb. 24, 1994). Here, the undisputed record demonstrates that respondent sent a bid for the Beauty HQ Project; RCI did not sign the bid but did not object to the bid; and respondent performed the work described in the bid. In fact, appellants do not dispute that they owe respondent for the work performed on the Beauty HQ Project. Although appellants contend that the subcontractor agreement controls the Beauty HQ Project, the undisputed record demonstrates that the parties acted in conformity with the bid submitted by respondent for the Beauty HQ Project. Under these circumstances, the undisputed records shows that the Beauty HQ Project agreement controls with respect to interest. As such, the district court did not resolve any factual dispute related to the Beauty HQ Project.

---

[2] Appellants also insinuate that there are factual disputes related to the Kelly Project agreement. But appellants do not specify the factual disputes that exist related to that agreement. As such, any argument that factual disputes exist related to the Kelly Project agreement are not properly before us. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982); *see McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (determining that arguments not briefed are waived in an appeal in which the appellant "allude[d] to" an issue but "fail[ed] to address them in the argument portion of his brief").

## II.

Appellants challenge the district court's "blanket award of interest under section 337.10 and the contracts." First, appellants argue that interest cannot be awarded for the Beauty HQ Project because that contract does not allow for interest. We construe this argument as premised on the theory that the subcontractor agreement controls the parties' obligations regarding the Beauty HQ Project and that agreement does not provide for interest. But as addressed above, the parties had an agreement related to the Beauty HQ Project and that agreement controls. The agreement related to the Beauty HQ Project specifically provides that "[u]npaid balances after 60 days will be subject to interest at the annual rate of 12%." It is not disputed that respondent was not paid for its performance on the Beauty HQ Project, and the district court awarded 12% interest pursuant to the agreement related to that project. The district court did not err in awarding interest to respondent for the Beauty HQ Project.

Second, appellants argue that the contract related to the Kelly Project does not allow for interest and that, even though the district court awarded interest under section 337.10, "a fact question exists as to whether the payment offered pursuant to the parties' ordinary course of performance would render the statutory elements unmet." We disagree.

Section 337.10 provides in relevant part:

> A building and construction contract shall be deemed to require the prime contractor and all subcontractors to promptly pay any subcontractor or material supplier contract within ten days of receipt by the party responsible for payment of payment for undisputed services provided by the party requesting payment, including payments under subdivision 4. The contract shall be deemed to require the party responsible

> for payment to pay interest of 1-1/2 percent per month to the party requesting payment on any undisputed amount not paid on time.

Minn. Stat. § 337.10, subd. 3.

Here, as the district court determined, "there is no written bid for [the Kelly Project] outlining the terms of late fees or interest." And both the subcontractor agreement and independent-contractor agreement are silent as to interest. Moreover, it is not disputed that respondent performed the work for the Kelly Project. The plain language of section 337.10, subdivision 3, clearly states that, under these circumstances, respondent was entitled to payment on the Kelly Project "within ten days of receipt by [RCI] of payment for undisputed services provided by [respondent]." *Id.* Although appellants claim that a "fact question exists as to whether the payment offered pursuant to the parties' ordinary course of performance" satisfies the elements of section 337.10, subdivision 3, appellants fail to point to anything in the record indicating that they offered payment within the statutory ten-day time frame. As such, the district court did not err in awarding respondent interest at the statutory interest rate for the Kelly Project.

Third, appellants argue that, with respect to the Erken Project, the district court erred by approving "compounding interest" because section 337.10, subdivision. 3 "allows interest on the 'undisputed amount not paid'; not the undisputed amount plus contract interest." To support their position, appellants note that, with respect to the Erken Project, "18 percent interest was calculated on contract principal plus accrued 12% interest." But appellants' position indicates that the district court awarded respondent 18% statutory interest on the Erken Project in addition to 12% contractual interest, which is a misconstruction of the record.

The record reflects that, pursuant to the bid related to the Erken Project, "Unpaid balances after 60 days will be subject to interest at the annual rate of 12%." In granting respondent's motion for summary judgment, the district court determined that, with respect to the "written bid" for the Erken Project, respondent is "entitled to the principal balance plus the 12% annual interest rate from 60 days after the first invoice on this project was sent to RCI." Respondent later submitted an affidavit calculating interest to be awarded on the Erken Project as follows:

> Erken Contract:
> a. Principal Amount: $15,075
> b. Invoice issued 5/8/23 (60 days after = 7/8/23)
> c. GC paid in full on 8/23/23 + 10 days = 9/2/23
> d. Sept. 3 2023 through 11/24/24 (day SJ was granted) = 448 days
> e. Interest at 12% (contract):
>  i. 7/8/23 through 9/2/23 = 56 days
>  ii. 15075 (56/365) (.12) = $277.54
> f. Interest at 18%:
>  i. (15075 + 277.54) (448/365) (.18) = 3,391.86
> **g. Total interest: $3,391.86**

Based on the above-referenced calculation, the district court awarded respondent interest, pursuant to the written bid for the Erken Project, at a rate of 12% per annum, from 60 days after respondent issued its invoice until ten days after RCI was paid in full. The district court then applied the statutory interest rate of 18% per annum from ten days after RCI was paid in full until the date the summary judgment motion was granted. The interest from the two time frames was then added together to form the amount of interest awarded for the Erken Project. But because the two time frames did not overlap, appellants are mistaken that the district court compounded the interest for the Erken Project. We therefore conclude that appellants have not shown that the district court's award of interest was erroneous.

**III.**

Appellants argue that respondent's claims under Minn. Stat. § 514.02, "were dismissed," but if they were not, the district court erred by holding all of the individual appellants jointly and severally liable. Based on our review of the order for summary judgment, respondent's claims under section 514.02 were dismissed and the individual appellants were not held jointly and severally liable.

The order for summary judgment recognized the claims asserted by respondent, including: "Breach of Contract against RCI"; "Violation of Minn. Stat. § 337.10 against RCI"; and "Theft of Proceeds, Minn. Stat. § 514.02, against all [appellants]." The district court then addressed respondent's breach-of-contract claim and determined that respondent "is entitled to the principal balance for all three contracts." The district court also addressed respondent's entitlement to interest and attorney fees and determined that respondent "is entitled to attorney[] fees, interest, costs, and disbursements for all three contracts at issue." And without addressing the other claims raised by respondent, the district court concluded that "[u]pon receipt of the necessary fee affidavits, this Court will enter judgment in favor of [respondent], and *all other claims will be dismissed with prejudice*." (Emphasis added.) Because the district court granted summary judgment in favor of respondent on its claims for breach of contract and interest and attorney fees, which were only asserted against RCI, and the district court dismissed "all other claims," including the claim against all appellants pursuant to section 514.02, the order for summary judgment did not provide a basis to hold appellants jointly and severally liable.

Nonetheless, the order for summary judgment states that "[j]udgment shall be entered . . . against Defendants," the plural of which indicates all individual appellants. Similarly, the order for judgment nunc pro tunc recognized that the district court "ordered summary judgment in favor of Plaintiff and monetary judgment in favor of Plaintiff and against *Defendants*." (Emphasis added.) The entry of judgment against all individual appellants conflicts with the district court's analysis on summary judgment, which granted relief against RCI, but dismissed all other claims against the individual appellants. Therefore, to the extent that the district court erroneously entered the judgment against all appellants, we reverse in part to correct that error.

**IV.**

Appellant argues that, because respondent "has a contract remedy at law, to the extent the[y] have not already been, [respondent's] unjust enrichment claims must be dismissed." Because the district court granted summary judgment in favor of respondent on its claims for breach of contract and interest and attorney fees, and dismissed "all other claims" without addressing the unjust-enrichment claim, we conclude that respondent's unjust-enrichment claim was dismissed.

**V.**

Appellants argue that they are entitled to relief because respondent failed to mitigate its damages. But it is well settled that appellate courts consider only issues presented to and decided by the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Here, although appellants raised this issue below, the district court did not consider it. Therefore, appellants' failure-to-mitigate-damages argument is not properly before us. *See id.*

**VI.**

Appellants challenge the district court's award of attorney fees to respondent. Generally, such an award is reviewed for an abuse of discretion. *State by Comm'r of Transp. v. Schneider*, 934 N.W.2d 140, 142 (Minn. App. 2019). But when an award of attorney fees "turns on the interpretation of a statute," our review is de novo. *Id.*

Under Minnesota law, "[a] party may not recover attorney fees from an opponent unless a statutory or contractual provision expressly allows for such recovery." *Correll v. Distinctive Dental Servs., P.A.*, 636 N.W.2d 578, 582 (Minn. App. 2001). Here, appellants argue first that the district court erred in awarding attorney fees for the Beauty HQ Project because the subcontractor agreement was the controlling agreement with respect to that project and the subcontractor agreement did not contain a provision for recovery of attorney fees. But as discussed above, respondent's written bid constituted the written agreement with respect to the Beauty HQ Project; respondent signed the bid, RCI did not object to the bid, and respondent performed the work described in the bid. The Beauty HQ Project bid clearly states: "If collection efforts are required to achieve payment, purchaser shall be responsible for all costs incurred including attorney[] fees." Because the Beauty HQ Project agreement clearly allows for attorney fees, the district court did not abuse its discretion by awarding attorney fees for the Beauty HQ Project.

Next, appellants argue that the district court erred by awarding attorney fees for the Kelly Project under section 337.10. But that statute provides that "[a] party requesting payment who prevails in a civil action to collect interest penalties from a party responsible for payment *must* be awarded its costs and disbursements, including attorney fees incurred in bringing the action. Minn. Stat. § 337.10, subd. 3 (emphasis added). As described above, respondent sought to collect interest from appellants for work performed for the Kelly Project and respondent prevailed in its action. Thus, the district court was required to award respondent its attorney fees related to the Kelly Project. *See id.*; *see also* Minn. Stat. § 645.44, subd. 15a (2024) ("'Must' is mandatory.").

Appellants further argue that the district court erred by holding all of the appellants personally liable for attorney fees. We agree. As addressed above, to the extent judgment was erroneously entered against all individual appellants, we reverse that judgment.

Lastly, appellants challenge the reasonableness of the attorney fees awarded to respondent. Minnesota courts generally use the lodestar method to determine the reasonableness of statutory attorney fees. *Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 535 (Minn. 2013). That method requires a district court to "determine the number of hours reasonably expended on the litigation and then multiply those hours by a reasonable hourly rate." *Id.* at 536. "In determining the reasonable value of the legal services, the district court should consider all relevant circumstances," including: "the time and labor required; the nature and difficulty of the responsibility assumed; the amount involved and the results obtained; the fees customarily charged for similar legal services; the experience, reputation, and ability of counsel; and the fee arrangement existing between counsel and the client." *Id.* (quotations omitted). "When the reasonableness of the requested attorney fees is challenged, the district court must provide a concise but clear explanation of its reasons for the fee award." *State by Comm'r of Transp. v. Krause*, 925 N.W.2d 30, 35 (Minn. 2019).

Here, the district court awarded respondent:

> $31,559.43 for attorney fees and costs – this was calculated by tallying all total fees, total disbursements, courtesy discounts, and trust retainer overpayments. Specifically, the $3,840 from May 9, 2024, was removed since that amount was discounted and covered by the retainer . . . .

Appellants argue that "the district court's order is devoid of any findings or other rational[e] as to the reasonableness [of attorney fees] besides its statement that it tallied the invoices and credited the retainer amount," which "deprives [appellants] of the ability to obtain meaningful review by this Court." We agree.

The district court's order awarding respondent $31,559.43 for attorney fees contains no analysis of the award. Rather, the district court simply awarded respondent the amount it sought for attorney fees, less the amount of the retainer. In other words, there is nothing to indicate that the district court considered the reasonableness of the attorney fees sought. And because the district court never considered the reasonableness of the amount of attorney fees sought, there are no findings for us to review with respect to reasonableness. We therefore reverse and remand the award of attorney fees for the district court to consider the reasonableness of the attorney fees sought without expressing any opinion as to the merits of the reasonableness of the attorney-fee award. *See Gams v. Houghton*, 869 N.W.2d 60, 65 (Minn. App. 2015) ("[R]emand is the appropriate remedy when the district court has made insufficient findings to enable appellate review.”), *aff’d as modified*, 884 N.W.2d 611 (Minn. 2016).

**Affirmed in part, reversed in part, and remanded.**