STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0210

Lariat Companies, Inc.,
Respondent,

vs.

Barbara Wigley,
Appellant,

Michael Wigley,
Defendant.

Filed September 14, 2020
Affirmed; motion denied
Larkin, Judge

Hennepin County District Court
File No. 27-CV-11-23736

George E. Warner, Jr., Warner Law, LLC, Minneapolis, Minnesota (for respondent)

Mychal A. Bruggeman, Tiede Grabarski PLLC, White Bear Lake, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Jesson, Judge; and Bratvold, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

On appeal from a judgment in favor of respondent-creditor following a court trial on its claims under the Minnesota Uniform Fraudulent Transfer Act (MUFTA), appellant-wife-transferee argues that the district court abused its discretion by denying her motion (1) for amended findings related to the district court's determination that the challenged transfers were both constructively fraudulent and made with actual intent to hinder, delay, or defraud respondent and (2) to vacate or reduce the judgment under Minn. R. Civ. P. 60.02. Appellant also filed a motion to supplement the record on appeal. We affirm the district court's judgment and deny the motion to supplement the record.

FACTS

This appeal arises from allegedly fraudulent transfers of assets from Michael Wigley (husband) to his wife, appellant Barbara Wigley (wife).[1] Husband is the majority owner of Baja Sol Cantina EP, LLC (Baja Sol), an entity operating a restaurant business in Eden Prairie. On October 8, 2008, Baja Sol entered into a commercial lease with respondent Lariat Companies, Inc. (Lariat). The lease term was for ten years, and husband, as Baja Sol's president, executed it on Baja Sol's behalf. Husband signed a personal guarantee for all of Baja Sol's obligations under the lease.

In June 2010, Baja Sol defaulted on the lease and was evicted from the premises. Lariat subsequently sued husband and Baja Sol for breach of contract, and sought

[1] Husband and wife will hereinafter be collectively referred to as "the Wigleys."

judgment, jointly and severally, for unpaid rent and attorney fees and costs. The district court granted Lariat's motion for summary judgment, awarding Lariat $2,224,237 in damages, pre-and-post-judgment interest, and reasonable attorney fees. This court affirmed the district court's judgment in *Lariat Companies, Inc. v. Baja Sol Cantina EP, LLC*, No. A12-2202 (Minn. App. Aug. 19, 2013).

In the meantime, Home Federal Savings Bank (Home Federal) sued husband in December 2010, related to a Baja Sol equipment lease. Husband subsequently entered into assignment and assumption agreements on March 1, 2011, in which he transferred to wife his interests in Spell Capital Partners Fund II, LP, and Spell Capital Funds III, LP (collectively Spell Capital Funds II and III) to wife. Around the same time, husband removed his name from a joint U.S. Bank account he held with wife.

Husband had negative equity in real property located on Tonkawa Road in Orono, which was encumbered by a mortgage in favor of Bremer Bank N.A. (Bremer Bank). To resolve that debt, husband provided a warranty deed to the Tonkawa Road property to Bremer on March 11, 2011, "as a deed in lieu of foreclosure."

On September 23, 2011, Indianhead Foodservice Distributer Inc. (Indianhead) sued husband to recover $116,452.20, plus late fees, collection costs, and attorney fees, related to foodservice products provided to Baja Sol. Two months later, on November 21, husband was forced into involuntary bankruptcy by his creditors, including Lariat. The next day, Lariat, Bremer Bank, and Home Federal commenced this action against wife, alleging

certain fraudulent transfers in violation of MUFTA, Minn. Stat. §§ 513.41-.51 (2010).[2] The complaint alleged that husband had fraudulently transferred funds to wife in an effort to conceal and preserve assets.

Husband's bankruptcy was dismissed on March 7, 2012, after he negotiated settlement with many of his creditors that had forced the involuntary bankruptcy proceeding. Shortly thereafter, in May 2012, Bremer Bank and Home Federal settled their fraudulent-transfer claims against wife. Lariat later amended its complaint to specifically allege that husband fraudulently transferred to wife his ownership interests in the following assets to avoid paying the judgment for Lariat: (1) Great Plains Supply of Sidney Inc.; (2) Spell Capital Funds II and III; (3) Fine Wine Appreciation Funds I and II; (4) a coin collection; and (5) checking and savings accounts.[3]

Husband and wife testified at trial, as well as expert witnesses for Lariat and the Wigleys. The testimony centered on the alleged transfers of the following assets: (1) Spell Capital Funds II and III; (2) U.S. Bank account; (3) coin collection; (4) wine collection; (5) Wine Funds; and (6) life insurance policies. Evidence was presented that at the time of the transfers, wife's interest in Spell Capital Fund II was $412,258, and her interest in Spell Capital Fund III was $358,533, for a total of $770,791.

[2] In 2015, the MUFTA was amended to the Minnesota Uniform Voidable Transactions Act (MUVTA). *See* Minn. Stat. §§ 513.41-.51 (Supp. 2015). The amended statute does not apply in this case because the effective date and application of the amendments do not apply to a transfer made before August 1, 2015. *See* 2015 Minn. Laws ch. 17, § 13, at 10.

[3] Although Lariat's amended complaint joined husband as a defendant in these proceedings, he is not a participant in this appeal.

Husband claimed that the purpose of transferring Spell Capital Funds II and III was to restore value to wife's estate due to a decline in real estate values. Husband also acknowledged that in 2011, he removed his name from a joint U.S. Bank account he held with wife. Husband further testified that although he did not pay the claims sought by Home Federal, Lariat, and Indianhead because he "disagreed with them" and "didn't believe that they were [his] obligations," wife later used the assets she received in the transfers to pay off debts to Bremer Bank and Home Federal. Evidence was presented that the total amount paid to Home Federal and Bremer Bank to settle their claims was $675,000.

Lariat's expert witness opined that husband became insolvent after he transferred Spell Capital Funds II and III and that, after the transfers, husband's liabilities exceeded his assets by $178,934. Wife's expert witness disagreed with Lariat's expert and claimed that Lariat's expert significantly overstated three of husband's liabilities and understated two of his assets. Specifically, wife's expert opined that husband's liabilities related to the Home Federal claim, Bremer Bank's mortgage on the Tonkawa Road property, and a debt to Wells Fargo related to GPS Hot Springs Partners LLP, were overstated. Wife's expert also opined that Lariat's expert understated husband's interest in two assets: (1) GPS Sidney Equity Interest, and (2) GPS Loan Receivable. Wife's expert testified that, based upon a proper calculation of husband's assets and liabilities, husband was solvent at the time of the transfers.

Following the trial, the district court determined that Lariat failed to establish its fraudulent-transfer claims with respect to (1) the coin and wine collection; (2) the Wine

Funds; and (3) the life insurance policies. But the district court determined that husband transferred his interests in Spell Capital Funds II and III and the U.S. Bank account to wife, "with actual intent to hinder, delay, or defraud Lariat; without receipt of reasonably equivalent value in exchange for the transfers; and at a time when . . . [husband] was insolvent or became insolvent as a result of the transfers." Thus, the district court concluded that Lariat established a presumption of fraudulent transfer as to Spell Capital Funds II and III, and the U.S. Bank account.

The district court further concluded that the Wigleys failed to rebut the presumption by clear and convincing evidence. In doing so, the district court found the Wigleys' testimony that the transfers were made for estate planning purposes incredible. The district court determined the value of Spell Capital Funds II and III to be $770,791 and the value of the U.S. Bank account to be $24,307, for a total of $795,098. The district court, therefore, entered judgment in favor of Lariat and against the Wigleys "jointly and severally, with statutory interest, costs, and disbursement."

The Wigleys moved for amended findings and to vacate the judgment. But their motion was stayed in February 2014, when husband filed for chapter 11 bankruptcy. After the bankruptcy court confirmed husband's plan of reorganization, wife renewed the motion for amended findings and moved to vacate the judgment.

In December 2016, wife's motion for amended findings and to vacate the judgment was granted in part and denied in part. The district court determined that it had erroneously determined the amount of the U.S. Bank account balance at the time of the transfer and therefore amended the findings to reflect a balance of $10,492.06. But after determining

that it had properly applied the badges of fraud and the presumption that transfers between spouses are fraudulent, the district court rejected wife's challenge to the finding that husband was insolvent at the time of the transfers. In addition, the district court determined that it had properly weighed the equities with respect to the judgment against wife. Lastly, the district court concluded that husband's bankruptcy discharge did not merit vacating the judgment against wife.

Wife filed for chapter 11 bankruptcy, and she later appealed the denial of her motion for amended findings and to vacate the judgment. This court stayed wife's appeal in light of her pending bankruptcy proceeding.

On June 20, 2018, the stay of appeal was dissolved. After briefing was complete, wife filed a motion to supplement the record with a supplemental addendum. Lariat opposed the motion.

On November 9, 2018, a bankruptcy appellate panel determined that Lariat's claim against wife must be disallowed. *In re Wigley*, 593 B.R. 327, 331 (B.A.P. 8th Cir. 2018). This court subsequently granted wife's motion to stay the appeal again, concluding that "[a]lthough it is not clear that any final bankruptcy decision regarding Lariat's claim would be self-implementing or have a direct impact on the state court judgment that is the subject of this appeal, a final discharge of any debt owed by [wife] to . . . Lariat may render this appeal moot."

In March 2020, the Eighth Circuit Court of Appeals reversed the bankruptcy appellate panel, concluding that husband's bankruptcy discharge extinguished his liability, but it did not retroactively extinguish wife's joint-and-several liability for the fraudulent-

transfer judgment. *In re Wigley*, 951 F.3d 967, 971 (8th Cir. 2020). The court also determined that, because Lariat's claim against wife resulted from the termination of a lease, the claim was subject to a cap on damages under 11 U.S.C. § 502(b)(6) (2018). *Id.* at 971-72. The court therefore held that Lariat's bankruptcy claim against wife was capped at $308,805 plus applicable interest. *Id.* at 972.

On May 1, 2020, this court dissolved the stay and reinstated this appeal.

D E C I S I O N

I.

Wife challenges the district court's denial of her motion for amended findings. "Upon motion of a party . . ., the court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered." Minn. R. Civ. P. 52.02. We review a "district court's decision whether to grant a motion for amended findings for an abuse of discretion." *Landmark Cmty. Bank, N.A. v. Klingelhutz*, 927 N.W.2d 748, 754 (Minn. App. 2019) (*Landmark II*); *see Stroh v. Stroh*, 383 N.W.2d 402, 407 (Minn. App. 1986) ("[T]he purpose of a motion to amend conclusions is to permit the [district] court a review of its own exercise of discretion."). A district court abuses its discretion if "its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018) (quotation omitted).

The purpose of MUFTA is "to prevent debtors from placing property that is otherwise available for the payment of their debts out of the reach of their creditors." *Finn v. Alliance Bank*, 860 N.W.2d 638, 644 (Minn. 2015) (quotation marks omitted). To fulfill

this purpose, "MUFTA allows creditors to recover assets that debtors have fraudulently transferred to third parties." *Id.* "To cover the variety of situations in which debtors may attempt to place assets beyond the reach of creditors, MUFTA allows creditors to recover assets that a debtor transfers with fraudulent intent" under Minnesota Statutes section 513.44(a)(1), "as well as those transfers that the law treats as constructively fraudulent" under sections 513.44(a)(2), and 513.45. *Id.*

The district court here determined that both the transfers were made with actual intent to hinder, delay, or defraud Lariat, and that they were constructively fraudulent. Wife challenges both determinations.

A. Actual Fraud

MUFTA provides:

> (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> (1) with actual intent to hinder, delay, or defraud any creditor of the debtor . . . .

Minn. Stat. § 513.44(a)(1).

Under MUFTA, actual intent under subsection (a)(1) is determined by consideration of the following factors, often referred to as "badges of fraud":

> (1) the transfer or obligation was to an insider;
> (2) the debtor retained possession or control of the property transferred after the transfer;
> (3) the transfer or obligation was disclosed or concealed;
> (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

> (5) the transfer was of substantially all the debtor's assets;
> (6) the debtor absconded;
> (7) the debtor removed or concealed assets;
> (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or amount of the obligation incurred;
> (9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation incurred;
> (10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
> (11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Minn. Stat. § 513.44(b); *see Finn*, 860 N.W.2d at 645 (explaining that, because actual intent to defraud a creditor is rarely susceptible of direct proof, a creditor may rely on various badges of fraud under Minn. Stat. § 513.44(b) to prove a debtor's fraudulent intent); *see also Citizens State Bank of Norwood Young Am. v. Brown*, 849 N.W.2d 55, 62 (Minn. 2014) (referring to the factors set forth in Minn. Stat. § 513.44(b) as "badges of fraud").

"The presence of a single badge of fraud may, but does not necessarily, prove fraudulent intent. The presence of several badges of fraud, however, creates an inference of fraud that requires clear evidence of a legitimate purpose to rebut." *Citizens State Bank*, 849 N.W.2d at 66 (citations omitted). Once a creditor has proved that the debtor made a transfer with fraudulent intent, the transferee may still defeat liability by establishing the affirmative defense set forth in Minn. Stat. § 513.48 (2010), which protects transferees who took the transfer in good faith and for a reasonably equivalent value. *Finn*, 860 N.W.2d at 645. "Otherwise, the creditor is entitled to recover judgment for the value of the asset transferred, or the amount necessary to satisfy the creditor's claim, whichever is less, against the transferee." *Id.* (quotation omitted).

"Whether a debtor made a transfer with fraudulent intent is ordinarily a question of fact." *Citizens State Bank*, 849 N.W.2d at 65. "Findings of fact . . . shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. We view the evidence "in the light most favorable to the verdict." *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). If reasonable evidence supports the district court's factual findings, "a reviewing court should not disturb those findings." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). But questions of law are reviewed de novo. *Alby v. BNSF Ry. Co.*, 934 N.W.2d 831, 833 (Minn. 2019).

The district court determined that the transfers of both the U.S. Bank account and Spell Capital Funds II and III "were made by [husband] with actual intent to hinder, delay, or defraud Lariat." In the order denying wife's motion for amended findings, the district court found that "[s]everal of the badges of fraud are present in this case[]," including (1) husband's insolvency at the time of the transfers; (2) husband did not receive value for the transfer; (3) wife did not use the proceeds of Spell Capital Funds II and III to settle husband's debt "immediately" after the transfer; (4) the transfers occurred after husband had been sued or threatened with suit regarding debts; (5) husband did not disclose the transfer to his creditors; and (6) husband made the transfer to an insider.

Wife argues that in finding that husband engaged in actual fraud, the "district court erroneously applied a marital presumption and improperly shifted and misstated the burden of proof." Wife also contends that a proper application of the badges of fraud does not support a finding that husband committed actual fraud.

1. Marital Presumption

Under MUFTA, an "insider" includes "a relative of the debtor." Minn. Stat. § 513.41(7)(i)(A). This statutory definition "includes spouses." *Landmark Cmty. Bank, N.A. v. Klingelhutz*, 874 N.W.2d 446, 452 (Minn. App. 2016) (*Landmark I*) (citing Minn. Stat. § 513.41(7)(i)(A) prior to MUFTA's amendment in 2015). Historically, in a contest between a wife and the creditors of her husband, a presumption of fraudulent conveyance existed that required affirmative proof to rebut. *See, e.g.*, *Kummet v. Thielen*, 298 N.W. 245, 246-47 (Minn. 1941) (stating that a "transfer between husband and wife is presumed to be fraudulent as to existing creditors," but noting that a "transfer by a husband to his wife of property which belongs to her legally or equitably is not fraudulent to his creditors"); *Minneapolis Stock-Yards & Packing Co. v. Halonen*, 57 N.W. 1135, 1135-36 (Minn. 1894) ("In a contest between the wife and the creditors of a husband there is . . . a presumption against her which she must overcome by affirmative proof."). "This presumption continued under the Uniform Fraudulent Conveyance Act." *Citizens State Bank*, 849 N.W.2d at 62; *see Snyder Elec. Co. v. Fleming*, 305 N.W.2d 863, 867 (Minn. 1981) (stating that, under MUFTA, "[t]he aggrieved creditor ordinarily bears the burden of proving a conveyance is fraudulent, but the relationship between the parties to a transaction may shift this burden to varying degrees").

In *Citizens State Bank*, however, the supreme court recognized that under MUFTA, whether a transfer is made to a spouse or other "insider" is one of 11 badges of fraud provided in Minn. Stat. § 513.44(b)(1). 849 N.W.2d at 62. But the supreme court declined to "decide whether the marital presumption survives the adoption of MUFTA" because the

parties to the allegedly fraudulent transfer in that case were not spouses at the time of the transfers. *Id.*

Seizing upon the language from *Citizens State Bank*, wife argues that the supreme court "implied that MUFTA would not recognize a presumption upon a marital status." Wife contends that this implication is bolstered by the supreme court's decision in *Finn*, which rejected the existence of a Ponzi-scheme presumption under MUFTA. In *Finn*, the supreme court considered whether "the so-called 'Ponzi-scheme presumption' applies to claims brought under MUFTA." 860 N.W.2d at 644. The supreme court stated that "MUFTA does not contain a provision allowing a court to presume fraudulent intent," and that MUFTA instead "contains a list of factors, commonly referred to as 'badges of fraud,' that a court may consider to determine whether a debtor made a transfer with actual intent to defraud creditors." *Id.* at 647. The court concluded that

> although a court could make a "rational inference" from the existence of a Ponzi scheme that a particular transfer was made with fraudulent intent, there is no statutory justification for relieving the Receiver of its burden of proving—or for preventing the transferee from attempting to disprove—fraudulent intent. Instead, fraudulent intent must be determined in light of the facts and circumstances of each case.

Id. (citation omitted).

As stated in *Citizens State Bank*, a presumption of fraudulent conveyance has historically been recognized in a contest between a wife and the creditors of her husband. 849 N.W.2d at 61. The *Citizens State Bank* court specifically declined to determine whether the "marital presumption survives the adoption of MUFTA." *Id.* at 62. And the *Finn* court rejected the existence of a Ponzi-scheme presumption, but not the marital

presumption under MUFTA. 860 N.W.2d at 647-48. Because the supreme court has acknowledged the existence of marital presumption after adoption of MUFTA and has not expressly rejected that presumption, the district court did not err by applying the marital presumption to Lariat's MUFTA claims. *See State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (stating that "[t]he district court, like this court, is bound by supreme court precedent").

Moreover, even if wife could show that the district court improperly applied the marital presumption, that error would not provide a basis for relief because wife cannot show prejudice. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *see also Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) (stating that appellant must show both error and prejudice to prevail on appeal). In determining that husband's transfer to wife was made with fraudulent intent, the district court considered the badges of fraud. Because the district court considered the badges of fraud in determining fraudulent intent, any error in an improper application of the marital presumption was harmless. *See Finn*, 860 N.W.2d at 647 (stating that MUFTA contains a list of factors, known as "badges of fraud," that are to be considered by the district court in determining fraudulent intent); *see also Reilly v. Antonello*, 852 N.W.2d 694, 700-01 (Minn. App. 2014) (affirming actual-fraud determination where, "[e]ven setting aside th[e] presumption of fraud for marital transfers," the district court found "ample badges of fraud surrounding the transactions" (quotation marks omitted)).

2. Badges of Fraud

Wife argues that the district court "misapplied the badges of fraud in holding that [husband] committed actual fraud." Specifically, she contends that the district court erred by failing to weigh the absence of the following "key badges of fraud as mitigating the presence of other more innocuous badges": (1) affirmative concealment of the transfers; (2) transfer of all assets; (3) absconding of the debtor; (4) further removal or concealment of assets; (5) that the debtor made the transfers immediately before incurring a new debt; and (6) that the debtor retained control of the transferred property for his own debt. We disagree.

Although the district court did not address all the badges of fraud listed in section 513.44(b), it was not necessary to do so: the statute simply lists several factors that "may" be considered in determining actual fraud. *See* Minn. Stat. § 513.44(b) (listing several factors to which "consideration may be given, among other factors," when "determining actual intent under subsection (a)(1)"). And the "presence of [only some] badges of fraud . . . creates an inference of fraud that requires clear evidence of a legitimate purpose to rebut." *Citizens State Bank*, 849 N.W.2d at 66 (citations omitted). Moreover, wife cites no caselaw supporting her proposition that the district court must weigh the absence of other badges of fraud as mitigating factors in determining fraudulent intent. Thus, wife is unable to show that the district court erred by not weighing the absence of several badges of fraud.

Wife also contends that the district court erred by finding actual fraud because "at least two" of the badges of fraud that were found by the district court to be present are not supported by the record: (1) husband's insolvency; and (2) husband's failure to disclose

the transfers. But the district court found the presence of six badges of fraud, which were unrebutted by wife. Although wife claims that two of the badges of fraud are not supported by the record, she fails to challenge the other four.[4] The presence of four badges of fraud is sufficient to support the district court's determination of actual fraud, particularly where the transfer occurred between spouses, which is a "significant consideration." *See Landmark I*, 874 N.W.2d at 452 (affirming determination of fraudulent intent where five badges of fraud were present, including that the property was transferred to a spouse's limited liability company, which constituted an "insider" under MUFTA); *see also Citizens State Bank*, 849 N.W.2d at 66 (stating that the "presence of [only some] badges of fraud . . . creates an inference of fraud that requires clear evidence of a legitimate purpose to rebut"). In fact, only one badge of fraud may be necessary to prove fraudulent intent. *See Citizens State Bank*, 849 N.W.2d at 66 ("The presence of a single badge of fraud may . . . prove fraudulent intent.").

Moreover, despite wife's argument to the contrary, the presence of the following two badges of fraud is supported by the record: (1) husband's failure to disclose the transfers; and (2) husband's insolvency. *See Wilson v. Moline*, 47 N.W.2d 865, 870 (Minn. 1951) (stating that appellate courts need not "discuss and review in detail the evidence for the purpose of demonstrating that it supports the [district] court's findings"). The district

[4] By not challenging the findings with respect to the other four badges of fraud, wife has forfeited this challenge. *See Middle River-Snake River Watershed Dist. v. Dennis Drewes, Inc.*, 692 N.W.2d 87, 91-92 (Minn. App. 2005) (concluding that challenge to district court's legal conclusion was waived because the issue was not briefed); *DLH, Inc. v. Russ*, 544 N.W.2d 326, 330 (Minn. App. 1996) (ruling that issue not raised on appeal was waived); *aff'd*, 566 N.W.2d 60 (Minn. 1997).

court, therefore, did not clearly err by determining that the transfers were made with fraudulent intent.

B. Constructive Fraud

Wife also challenges the district court's constructive-fraud determination. Constructive fraud does not require proof of fraudulent intent; rather, it requires a creditor to prove that

> the debtor made the transfer or incurred the obligation: . . .
>
> (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
>
> (ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

Minn. Stat. § 513.44(a)(2); *see also* Minn. Stat. § 513.45(a) (stating that a transfer is fraudulent "as to a creditor whose claim arose before the transfer was made" if there was no "reasonably equivalent value" for the transfer and "the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer"). Therefore, "a claim for constructive fraud turns on a creditor's ability to show that the debtor made the transfer without receiving reasonably equivalent value, and that the debtor was insolvent, or the transfer made the debtor insolvent or unable to pay its debts." *Finn*, 860 N.W.2d at 645.

Under MUFTA, "[a] debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation." Minn. Stat. § 513.42(a). MUFTA also

states that "[a] debtor who is generally not paying debts as they become due is presumed to be insolvent." Minn. Stat. § 513.42(b).

Wife does not dispute that Lariat's claim arose before the transfers were made and that she did not give reasonably equivalent value for the transfers. But wife challenges the district court's finding that the transfers rendered husband insolvent. Specifically, she argues that the district court clearly erred by finding that (1) husband "was not paying his debts as they came due; and (2) [husband's] liabilities exceeded his assets."

1. Payment of Debts as They Became Due

The district court found that husband "was unable to pay his debts as they became due," relying on "the deed in lieu of foreclosure" on the Tonkawa Road property, "the various lawsuits and judgments, and the bankruptcy proceeding." Wife challenges that finding, arguing that it is legally erroneous because it disregards "MUFTA's requirement to ignore debts subject to a bona fide dispute in analyzing whether a debtor is paying debts as they become due." Wife argues that, because husband had a bona fide dispute regarding the debts he owed to Home Federal, Bremer Bank, and Lariat, the presumption of insolvency did not arise under MUFTA for nonpayment of debt. We are not persuaded.

As wife acknowledges, when MUFTA was amended in 2015, the presumption set forth in section 513.42(b) was amended to read:

> (b) A debtor that is generally not paying the debtor's debts as they become due *other than as a result of a bona fide dispute* is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

2015 Minn. Laws ch. 17, § 2, at 4 (emphasis added). But the 2015 amendments to MUFTA "do not apply to a transfer made, an obligation incurred, or a right of action incurred before August 1, 2015." 2015 Minn. Laws ch. 17, § 13, at 10. It is undisputed that the transfers here occurred before August 2015. Thus, the language pertaining to a bona fide dispute related to the debts does not apply to the transfers in this case.

Nonetheless, wife argues that the language pertaining to a bona fide dispute is applicable to this case because the revision simply "codified existing law." But wife relies on a Minnesota Federal District Court opinion and a secondary source to support her position, neither one of which is binding on this court. *See State Farm Mut. Auto. Ins. Co. v. Lennartson*, 872 N.W.2d 524, 532 n.4 (Minn. 2015) (stating that secondary sources are nonbinding); *see also Robins v. Conseco Finance Loan Co.*, 656 N.W.2d 241, 246 (Minn. App. 2003) ("[D]ecisions from . . . federal courts are not precedential.").

Furthermore, even if the 2015 amendment to section 513.42(b) applied in this case, wife is unable to show that the district court erred by determining that husband was not paying his debts as they became due. The record supports the district court's finding that husband was not paying his debts as they became due, which was evidenced by the lawsuits brought by Lariat, Home Federal, and Bremer Bank, as well as by the foreclosure of the Tonkawa Road property. Although, at trial, husband raised the defense that he was not paying his debts because he had a bona fide dispute regarding their debts, the district court specifically found that husband was not a credible witness. It is well settled that a reviewing court defers to the district court's credibility determinations. *See In re Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d 495, 507 (Minn. 2012) (stating that appellate

courts "defer to the district court's opportunity to assess the credibility of witnesses"). On this record, the district court did not err by determining that husband was not paying his debts as they became due and therefore was presumed to be insolvent.

2. Husband's Liabilities Compared to His Assets

Wife also argues at length that the district court "erred in finding that [husband's] liabilities exceeded his assets at the time of the transfer." Specifically, wife contends that the district court made at least five errors, four of which that "are significant enough that correction of any of them would require finding [husband] solvent on the date of the transfers." Wife argues that these errors include an (1) overstatement of the Home Federal claim; (2) overstatement of the Bremer Bank deficiency claim; (3) overstatement of the Hot Springs Guaranty; (4) understatement of the GPS Sidney Equity Interest; and (5) understatement of the GPS Dickinson Loan Receivable. Again, we are not persuaded.

The district court's findings relating to its determination that the transfers made husband insolvent are supported by the testimony of Lariat's expert, the Wigleys' deposition testimony, and cash-flow estimates and statements of net worth provided by the Wigleys. In making its determination, the district court rejected the evidence presented by wife, including the testimony of wife, husband, and wife's expert witness. Wife contends that the district court improperly gave greater weight to Lariat's evidence and the testimony of its expert witness, but this court does "not reweigh the evidence that was before the district court, and we defer to a district court's credibility determinations." *Landmark II*, 927 N.W.2d at 755; *see also State ex rel. Trimble v. Hedman*, 192 N.W.2d 432, 440 (Minn.

1971) (stating that appellate courts defer to the fact-finder's determination of the weight and credibility of expert-witness opinions).

In sum, the district court did not clearly err by valuing the challenged assets and liabilities or by determining that husband failed to rebut the presumption of insolvency. Wife therefore has failed to show that the district court's finding of constructive fraud is clearly erroneous.

II.

Wife challenges the district court's denial of her motion to vacate or reduce the judgment under Minn. R. Civ. P. 60.02(e) and (f), arguing that husband's successful chapter 11 bankruptcy warrants vacation of the judgment and that equitable grounds require that the judgment be reduced or vacated.

Under rule 60.02 of the Minnesota Rules of Civil Procedure, a district court may relieve a party from a final judgment if "[t]he judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Minn. R. Civ. P. 60.02(e). This provision embodies the court's equitable power to modify a decree in light of changed circumstances and applies to any judgment that has prospective effect. *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. App. 2003). The burden of proof is on the party seeking relief. *Id.*

Under rule 60.02(f), a court may relieve a party from a final judgment, order, or proceeding for "[a]ny other reason justifying relief from the operation of the judgment." Minn. R. Civ. P. 60.02(f). This rule "has been designated as a residual clause, designed

only to afford relief in those circumstances exclusive of the specific areas addressed by clauses (a) through (e)." *Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 924 (Minn. 1990). "Relief is available only under exceptional circumstances and then, only if the basis for the motion is other than that specified under clauses (a) and (e)." *Id.*

A district court has discretion to grant rule 60.02 relief "based on all the surrounding facts of each specific case." *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016). We will not reverse a district court's decision regarding a motion to vacate a judgment absent an abuse of that discretion. *See, e.g.*, *Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004). But issues involving statutory interpretation are questions of law, which are reviewed de novo. *Bruton v. Smithfield Foods, Inc.*, 923 N.W.2d 661, 664 (Minn. 2019).

A. Husband's Chapter 11 Bankruptcy Proceedings

Wife argues that the district court abused its discretion by denying her motion to vacate the judgment because husband's discharge in the bankruptcy proceedings "bars any further enforcement or collection by [Lariat] under MUFTA." But the Eighth Circuit Court of Appeals concluded that Lariat has a claim against wife because "[i]n bankruptcy, 'discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.'" *Wigley*, 951 F.3d at 970 (quoting 11 U.S.C. § 524(e)) (stating that husband's "discharge extinguished his liability, not [wife's]"). The court also rejected wife's argument that "Lariat's acceptance of [husband's] bankruptcy plan fully paid its capped claim, extinguishing any liability against her under MUFTA." *Id.* The court held that wife's argument failed for two reasons: (1) "the parties stipulated that [husband's] payment did not cover all money owed Lariat" and (2) "the Minnesota

court [in this case] ruled that the fraudulent-transfer judgment exists, even after [husband's] discharge." *Id.*

Wife argues that the Eighth Circuit Court's decision "ignore[s] the plain language of MUFTA and similar state statutes which afford relief only to collect upon the transferor's underlying liability." Specifically, she contends that "[t]o maintain a claim under MUFTA against a transferee, a 'creditor' must have a 'right to payment' from the 'debtor.'" Wife then refers to the definitions of "debtor," "creditor," "claim," and "debt," as set forth in MUFTA and argues that, because husband's debt was discharged in the bankruptcy proceedings, husband was no longer a "debtor," Lariat was no longer a "creditor," and Lariat no longer had a "claim" under MUFTA. In other words, wife argues that, in light of husband's bankruptcy proceedings, Lariat no longer has a right to payment from husband. Thus, wife contends that despite the decision of the Eighth Circuit Court of Appeals, this court can vacate the judgment if we conclude that the district court's ruling was erroneous.

Wife's argument is without merit because, as the district court determined, it "ignores the fact that at the time judgment was entered in this case, . . . Lariat was in fact [husband's] creditor." It also ignores the plain language of section 513.47, which provides the following creditor remedies:

> (a) In an action for relief against a transfer or obligation under sections 513.41 to 513.51, a creditor, subject to the limitations in section 513.48, may obtain:
>
> (1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim:

> (2) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by chapter 570;
>
> (3) subject to applicable principles of equity and in accordance with applicable Rules of Civil Procedure:
>
> (i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
>
> (ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
>
> (iii) any other relief the circumstances may require:
>
> (b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Minn. Stat. § 513.47. There is nothing in MUFTA, including section 513.48, related to defenses, liability, and protection of the transferee that indicates that the bankruptcy discharge of husband's creditors, including Lariat, retroactively operates to discharge wife's debt in this case. In fact, as the Eighth Circuit Court of Appeals determined, the bankruptcy code specifically states that the "bankruptcy 'discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.'" *Wigley*, 951 F.3d at 970 (quoting 11 U.S.C. § 524(e)).

Wife also argues that the Second Circuit Court of Appeals' recent decision in *In re Tribune Co. Fraudulent Conveyance Litigation*, 946 F.3d 66 (2d Cir. 2019), "call[s] into question whether fraudulent transfer claims revert to creditors post-bankruptcy and beyond the expiration of a bankruptcy trustee's two-year statute of limitation to bring such claims." But "decisions from . . . federal courts are not precedential." *See Robins*, 656 N.W.2d at 246. Moreover, as wife acknowledges, the language from *Tribune* upon which wife relies is dicta, and it is therefore not binding on this court. *See State ex rel. Foster v. Naftalin*,

74 N.W.2d 249, 266 (Minn. 1956) ("Dicta . . . generally is considered to be expressions in a court's opinion which go beyond the facts before the court and therefore are the individual views of the author of the opinion and not binding in subsequent cases."). Wife cites no binding, or otherwise persuasive, authority to support her argument that husband's discharge in the bankruptcy proceedings bars any further enforcement or collection by Lariat under MUFTA. Wife therefore fails to show that the district court erred by concluding that husband's bankruptcy proceeding did not extinguish wife's liability to Lariat under MUFTA.

B. Equitable Considerations

Wife also challenges the district court's denial of her motion to vacate the judgment based on equitable considerations. Citing Minn. Stat. § 513.48, wife initially contends that her "use of the transfers to pay creditors of [husband] warrants an offset of the judgment of at least $675,000. That statute provides:

> (b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section 513.47(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:
>
> (1) the first transferee of the asset or the person for whose benefit the transfer was made; or
>
> (2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.
>
> (c) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

Minn. Stat. § 513.48(b), (c).

Wife argues that, because the district court based the amount of the judgment on the value of the U.S. Bank account and Spell Capital Funds II and III, section 513.48(c) provided the district court with "the option to reduce the judgment for equitable considerations." But as wife acknowledges, the funds were paid to Home Federal and Bremer Bank, and not Lariat.

In her supplemental brief wife argues that two recent cases, *Landmark II* and *In re DeBerry*, 945 F.3d 943 (5th Cir. 2019), support her position that the use of the transferred funds to pay and settle the claims of Bremer Bank and Home Federal "should result in a dollar-for-dollar reduction of the fraudulent transfer judgment." But the issues before this court in *Landmark II* involved the market value of real property and the application of the agricultural homestead exemption under Minn. Stat. § 510.02, subd. 1; it did not involve circumstances similar to those here. *Landmark II*, 927 N.W.2d at 761. As such, *Landmark II* is not applicable.

Moreover, in *DeBerry*, the Fifth Circuit Court of Appeals held that, once fraudulently transferred property has been returned, a bankruptcy trustee cannot recover it again, using the section of the Bankruptcy Code governing liability of transferees of avoided transfers. 945 F.3d at 947. But the issue in *DeBerry* involved a bankruptcy trustee's ability to recover the transferred property under bankruptcy law, not a creditor's ability to recover transferred property based on a state-law claim. And the court in *DeBerry* recognized that "[t]here is a distinction between a transferee who retains legal title while voluntarily using the property for the debtor's benefit, and a transferee who has completely returned the property to the debtor." *Id.* at 948. Because, unlike this case, the *DeBerry*

court was presented "only with the second scenario," *DeBerry* does not support wife's argument. *Id.*

In sum, Lariat's judgment still remains unsatisfied, and the recent cases cited by wife in her supplemental brief do not support her position under Minn. Stat. § 513.48. Thus, wife cannot show that the district court abused its discretion by not considering the equities under section 513.48.

Next, wife contends that Lariat's "contrary positions in [husband's] bankruptcy case constitute an additional ground for equitable relief." Specifically, wife points out that, in husband's bankruptcy case, Lariat claimed that husband was not under financial distress when he filed for bankruptcy and supported that position with testimony from Lariat's president that husband had always been solvent since the beginning of the guaranty. Wife contends that the district court erred by discounting that testimony.

Wife's argument asks us to weigh the credibility of witness testimony, which we will not do. *See State ex rel. Rockwell v. State Bd. of Educ.*, 6 N.W.2d 251, 260 (Minn. 1942) (stating that appellate courts "cannot reweigh the evidence for the purpose of determining where the preponderance lies, nor substitute its judgment as to the credibleness of the testimony of a witness for that of the tribunal charged with the duty of determining the facts" (quotation omitted)). Moreover, as Lariat points out, insolvency was not required to establish Lariat's actual-fraud claim because several badges of fraud were established that sufficiently demonstrated that the transfers were made with intent to defraud. Further, although the deposition testimony of Lariat's president was taken after the trial in this case, it was discoverable before the trial in this case. The fact that this evidence was discoverable

before trial weighs in favor of the district court's decision to deny wife's motion to vacate the judgment on equitable grounds. *See Nelson v. Dahl*, 219 N.W. 941, 942 (Minn. 1928) (stating that evidence discoverable before trial "cannot justify granting a new trial"). In sum, wife's argument regarding husband's solvency does not provide a basis to reverse the district court's discretionary decision to deny equitable relief.

Lastly, wife argues that we should consider that Lariat's "underlying claim that resulted in the fraudulent transfer judgment largely included future rents on a commercial lease." Indeed, the Eighth Circuit Court of Appeals concluded that the cap under 11 U.S.C. § 502(b)(6) was applicable and therefore capped Lariat's bankruptcy claim against wife at $308,805, plus applicable interest. *Wigley*, 951 F.3d at 972. Although the statutory cap may affect the amount Lariat is able to collect on the judgment, wife has not shown that the cap requires an equitable reduction of the judgment.

In conclusion, the district court did not abuse its discretion by denying wife's motion to vacate or reduce the judgment.

III.

Wife moved this court to supplement the record on appeal with "documents from [her] bankruptcy case." She claims that the purpose of this supplemental evidence is to provide this court with background information regarding a "payment application issue" that wife "believes" is raised on appeal, "before any lower court has ruled on the issue." Wife "objects to this issue being before this court." The issue that wife identifies is not determinative of any issue in this appeal.

The documents filed in the district court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases. Minn. R. Civ. App. P. 110.01. An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). Lastly, "production of record evidence is never allowed in an appellate court for the purpose of reversing a judgment." *Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 584 (Minn. 1977). We therefore deny wife's motion to supplement the record.

Affirmed; motion denied.