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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1995**

Mirella Greene,
Respondent,

vs.

Penny M. Draves, f/k/a Penny M. Greene, a/k/a Penny M. Greene-Draves,
Appellant,
Richard S. Draves, et al.,
Defendants.

**Filed September 6, 2011
Affirmed; motion denied
Stoneburner, Judge**

Ramsey County District Court
File No. 62CV097865

Perry M. de Stefano, Spangler and de Stefano, P.L.L.P., St. Paul, Minnesota (for
respondent)

Penny M. Draves, White Bear Lake, Minnesota (pro se appellant)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and
Ross, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges summary judgment granted to respondent on claims that
appellant converted funds due under a purchase agreement. Appellant argues that the
district court erred by holding that parol evidence of an oral agreement contrary to the

terms of the written purchase agreement was inadmissible to create an issue of material fact about the terms of the purchase agreement. Appellant also argues that the district court erred when it declined to sanction respondent's attorney for misconduct.

Respondent moves to strike portions of appellant's briefs and appendix, arguing that appellant failed to present the information to the district court. We deny respondent's motion as moot, and we affirm.

FACTS

The undisputed facts of this voluminous and acrimonious case are not complex. Appellant Penny Draves is the daughter of respondent Mirella Greene. In 2003, Greene, a widow, had a heart attack and suffered from other health issues. Draves essentially moved into Greene's house to care for Greene. In 2005, the parties agreed that Penny Draves and her then husband, Richard Draves, would purchase Greene's house, and Greene would continue to live there with the Draveses.¹ The Draveses sold their home, and Penny Draves, who, at the time, was a real estate agent, drafted a purchase agreement stating that Richard and Penny Draves would purchase Greene's home for \$335,000. Greene agreed to pay for various costs associated with the sale, including Draves's 1% commission based on the \$335,000 purchase price.

At closing, checks totaling \$82,431.53 from the closing proceeds were issued to various contractors with whom Penny Draves had contracted for remodeling work on the home. Remaining proceeds from the closing were deposited into Greene's bank account,

¹ Richard Draves has not appealed the judgment entered against him. Insofar as he participated in the lawsuit, his position is the same as that of Penny Draves.

which Penny Draves had been authorized to manage with Greene's knowledge and consent. Penny Draves had Greene sign checks from that account in the amount of \$89,593.65 to pay for an addition to the home.

In 2009, after Greene had moved out of the home, Greene brought this lawsuit against Richard and Penny Draves, asserting, among numerous other claims, that the Draveses converted Greene's funds.² The Draveses answered, denying conversion and other claims against them. Throughout the highly contentious discovery process, the Draveses asserted that Greene agreed to sell her home to them for \$165,000 with the understanding that Greene would continue to live in the home and that the Draveses would build an addition on the home to accommodate private space for Greene and the Draveses. The Draveses asserted that they obtained a \$175,000 construction loan for the addition, but, at the suggestion of their mortgage-loan consultant, combined the construction loan and the \$165,000 purchase loan into one loan "for a total loan of \$335,000.00."³ Penny Draves admits that all of the purchase proceeds from the closing not otherwise disbursed at closing were deposited into Greene's bank account, but asserts that Greene never "owned" the \$175,000 in construction-loan funds, and, therefore, the Draveses' use of the funds did not constitute conversion.

² Greene also sued Edina Realty Inc., but that claim has been settled and Edina Realty Inc. was dismissed.

³ Some documents unrelated to this litigation state that the purchase price was \$340,000. Penny Draves does not explain why the combination of the \$165,000 purchase loan and \$175,000 construction loan resulted in \$335,000 as the purchase price on the purchase agreement.

Greene denies any such agreement with the Draveses and asserts that the full amount of the purchase price, after payment of the limited agreed-upon costs, belonged to her. Greene asserts that she did not realize that the Draveses had converted the purchase funds until she discovered that her bank account had been depleted.

During the litigation, Penny Draves moved for rule 11 sanctions against Greene's attorney. The district court denied the motion. Greene then moved for partial summary judgment on the conversion claims, arguing that, as a matter of law, the Draveses could not assert an oral agreement to alter the terms of the unambiguous written purchase agreement. Penny Draves did not respond to the summary-judgment motion but appeared pro se at the hearing and argued her position. Richard Draves did not appear at the hearing and the district court entered default judgment against him.

The district court concluded that, even taking all of Penny Draves's assertions as true, her parol evidence was inadmissible to vary the terms of the written purchase agreement. The district court granted partial summary judgment in favor of Greene, ruling that the Draveses converted Greene's funds in the amount of \$172,025.18. The district court awarded judgment in that amount against the Draveses together with statutory costs and disbursements. And, because the judgment awarded all of the damages that Greene sought, the district court dismissed the remaining claims in the complaint with prejudice. This pro se appeal by Penny Draves followed, in which she asserts that the district court erred in denying sanctions and argues, for the first time, that her part-performance of the oral contract takes that agreement out of the statute of frauds and creates a fact issue that precludes summary judgment.

DECISION

I. Summary Judgment

On appeal from summary judgment, a reviewing court examines whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). “We review de novo whether a genuine issue of material fact exists,” and “whether the district court erred in its application of the law.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

The statute of frauds requires that a contract for the sale of real property be “in writing, subscribed by the parties.” Minn. Stat. § 513.04 (2010). Neither party asserts that the purchase price is ambiguous or that the purchase agreement is not an integrated contract. The district court correctly held that the purchase agreement in this case satisfies the statute of frauds and is an enforceable contract.

Under general contract law, the terms of an integrated, unambiguous written contract may not be varied or contradicted by parol evidence of previous understandings. *Apple Valley Red-E-Mix, Inc. v. Mills-Winfield Eng’g Sales, Inc.* 436 N.W.2d 121, 123 (Minn. App. 1989) (citing 3A. Corbin, Corbin on Contracts § 573 (1960)), *review denied* (Minn. Apr. 26, 1989). “The parol evidence rule is a substantive rule and not one of evidence.” *Id.* The rule “prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements . . . to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing.” *Danielson v. Danielson*, 721 N.W.2d 335, 338 (Minn. App. 2006).

Penny Draves attempts to vary the terms of the unambiguous written purchase agreement with parol evidence of a prior agreement. The district court did not err in holding that, even if all of Penny Draves's assertions are true, her evidence is inadmissible to vary the terms of the binding contract in which she agreed to pay Greene \$335,000 for Greene's home. And the district court did not err by holding that to the extent that Penny Draves was attempting to enforce her alleged oral agreement with Greene to purchase the home for \$165,000 and her assertion that \$175,000 of the purchase price was actually a construction loan to Penny Draves the agreement is unenforceable because it does not satisfy the statute of frauds.

On appeal, Penny Draves does not address the parol-evidence rule but argues that the doctrine of part performance takes her oral agreement with Greene out of the statute of frauds. Penny Draves did not plead the equitable doctrine of part performance and did not argue the doctrine in the district court. Generally this court will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Additionally, the part-performance doctrine has only been recognized in actions for equitable relief, not in matters such as the instant case, which is an appeal from a money judgment. *See Bouten v. Richard Miller Homes, Inc.*, 321 N.W.2d 895, 899 (Minn. 1982) (rejecting an argument based on the equitable doctrine of part performance, noting that the argument has only been recognized in actions for equitable relief). We decline to address this argument except to note that Penny Draves has failed to produce any evidence of conduct that points unequivocally to a contractual relationship with Greene on the terms she asserts; all of her conduct is equally explained by the

allegations that she converted Greene's funds. And the parol-evidence rule precludes admission of Penny Draves's testimony about the alleged oral agreement, including her assertion that she invested \$35,469.07 of her own money in part performance of the oral agreement, which Penny Draves argues creates an issue of material fact that precludes summary judgment. The district court correctly granted summary judgment, ruling that parol evidence was inadmissible to prove Penny Draves's theory of the case or to show the existence of a material-fact issue. "[A]lthough some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standard as attorneys and must comply with court rules." *Black v. Rimmer*, 700 N.W.2d 521, 527 (Minn. App. 2005) (quoting *Fitzerrald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001)), *review dismissed* (Minn. Sept. 28, 2005).

II. Rule 11 sanctions

Penny Draves also appeals denial of her motion for rule 11 sanctions against Greene's attorney. We review a district court's determination of the need for rule 11 sanctions for an abuse of discretion. *Leonard v. Nw. Airlines, Inc.*, 605 N.W.2d 425, 432 (Minn. App. 2000).

The district court found that Penny Draves failed to show improper conduct by Greene's attorney and that her motion was procedurally deficient because adequate notice was not provided. A motion for rule 11 sanctions must (1) be made separately from other motions or requests; (2) describe the specific conduct alleged to violate the rule; and (3) be served as provided in Minn. R. Civ. P. 5. Minn. R. Civ. P. 11.03(a)(1); *see Gibson v. Coldwell Banker Burnet*, 659 N.W.2d 782, 789–90 (Minn. App. 2003) (holding that the

district court abused its discretion by imposing rule-11 sanctions when the moving party failed to follow the provisions of Minn. R. Civ. P. 11.03(a)(1)). Penny Draves argues that the district court should have found that sanctions were warranted because counsel made false statements in a joint statement of the case that Penny Draves had not requested a jury trial and had refused to participate in filing the joint statement. Penny Draves also asserts that counsel failed to make a reasonable inquiry into the veracity of Greene's pleadings. But Penny Draves does not address the procedural deficiencies that are fatal to her motion. The procedural deficiencies alone support the district court's denial of Penny Draves's request for rule 11 sanctions.

III. Motion to strike

Finally, we address Greene's motion to strike portions of Penny Draves's briefs for presenting evidence not received by the district court. *See* Minn. R. Civ. P. 110.01 (defining the record on appeal as the papers filed in the district court and the transcript, if any). Our decision rests solely on evidence received by the district court. And because parol evidence may not be received to alter a written agreement, the documentation and portions of Draves's brief that Draves submitted in support of her parol-agreement theory are not considered. Therefore Greene's motion to strike is denied.

Affirmed; motion denied.