STATE OF MINNESOTA
IN COURT OF APPEALS
A11-514

Curtis G. Marks, et al.,
Respondents,

vs.

Erotas Building Corporation,
defendant and third party plaintiff,
Appellant,

vs.

Conroy Brothers Company,
n/k/a Olympic Wall Systems, Inc.,
third party defendant,
Co-Appellant,

Loewen Windows, et al.,
Third Party Defendants.

Filed February 6, 2012
Affirmed
Hudson, Judge

Hennepin County District Court
File No. 27-CV-09-3537

Curtis D. Smith, Moss & Barnett, P.A., Minneapolis, Minnesota (for respondents)

Peter M. Waldeck, Waldeck & Lind, P.A., Minneapolis, Minnesota (for appellant)

Nicholas L. Klehr, Lori L. Jensen-Lea, Hopkins, Minnesota; and

Todd L. Nissen, Edina, Minnesota (for co-appellant)

Considered and decided by Larkin, Presiding Judge; Klaphake, Judge; and Hudson, Judge.

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

HUDSON, Judge

On appeal from denial of their motion to reduce a judgment, appellant and co-appellant argue that the district court erred by not reducing the judgment under the collateral-source doctrine and principles of collateral estoppel and unjust enrichment. Appellant and co-appellant also argue that the district court erred by granting respondents' motion for preverdict interest. Additionally, co-appellant argues that the district court erred in allowing interest to run on its contribution claim from the date that appellant filed its third-party claim. Because the district court did not err in maintaining the judgment, granting preverdict interest, and awarding interest on co-appellant's contribution claim from the filing of the third-party claim, we affirm.

FACTS

In 2006, respondents Curtis and Stacy Marks bought a home on Lake Minnetonka for $8.2 million. Appellant Erotas Building Corporation completed construction of the home in 1998. In August 2007, a storm damaged the home. In January 2008, respondents discovered a wet spot on a floor and discoloration on a wall, window, and ceiling. A company hired by respondents to investigate the discoloration discovered mold growth in the house. Respondents and their children moved out in April 2009.

In December 2008, respondents filed the lawsuit at issue against appellant, alleging that construction negligence caused the mold damage. In January 2009,

appellant filed a third-party claim seeking contribution against co-appellant Conroy Brothers Company. In June 2009, respondents filed a lawsuit in U.S. District Court seeking to recover from their homeowner's insurance company for the August 2007 storm damage. The federal lawsuit was settled for a confidential amount.

In October 2010, a 12-day jury trial commenced in the lawsuit at issue. Respondents claimed $6 million in damages. Both parties agreed to submit the damages issue to the jury as a single issue rather than dividing the issue on a special verdict form between general damages to the home and alternative living expenses. The jury awarded $600,000 in damages, attributing 75 percent of the negligence to appellant and 25 percent to co-appellant. The district court entered a $600,000 judgment. In addition, the district court determined that appellant is entitled to recover a $150,000 judgment from co-appellant.

Appellant and co-appellant moved for a reduction of the verdict based on the collateral-source rule, collateral estoppel, and unjust enrichment. The district court denied the motion. In its denial, the district court determined that the statutory collateral-source rule did not apply. The district court further determined that the payment respondents received from their homeowner's insurance was a reimbursement based on contract liability, which was distinct from the damages respondents received for construction negligence. Additionally, the district court determined that it could not reduce the award because it was impossible to ascertain which damages the jury's award applied to, given the parties' agreement to give the jury a single damages question. The

district court also stated that unjust enrichment must be pleaded as a cause of action and is "not a method by which a party is allowed to offset a jury's award of damages."

Respondents moved for preverdict interest, which the district court granted at 10 percent per year from the date that respondents filed their lawsuit. Interest on appellant's judgment against co-appellant began running on the date that appellant filed a third-party claim against appellant.

This appeal follows.

D E C I S I O N

I

Under the common-law collateral-source doctrine, compensation from a third party does not diminish recovery from a tortfeasor. *VanLandschoot v. Walsh*, 660 N.W.2d 152, 155 (Minn. App. 2003). This common-law doctrine was partially abrogated by what is now Minn. Stat. § 548.251 (2010). *Leamington Co. v. Nonprofits' Ins. Ass'n*, 661 N.W.2d 674, 678 (Minn. App. 2003). The statute limits duplicate recovery in personal-injury claims. *Duluth Steam Coop. Ass'n v. Ringsred*, 519 N.W.2d 215, 217 (Minn. App. 1994); Minn. Stat. § 548.251 (2010). But the common-law doctrine, not the statutory rule, applies to property-dispute claims. *Id.* When a case's underlying facts are undisputed, the district court's application of the law is reviewed de novo. *Dean v. Am. Family Mut. Ins. Co.*, 535 N.W.2d 342, 343 (Minn. 1995).

Appellant and co-appellant argue that the district court erred by denying their motion to reduce the $600,000 verdict under the collateral-source rule. The district court determined that the statutory collateral-source rule did not apply and that the insurance

payment to respondents for storm damage was a permissible collateral-source payment to the jury's tort liability award for construction negligence. The district court also noted that, without a special-verdict form, it could not reduce the jury award to offset the insurance payment because it did not know the precise damages included by the jury in its award.

Repeatedly, appellant argues that the collateral-source doctrine does not permit double recovery, which it claims occurred here. But appellant misstates the collateral-source law. The doctrine limits double payment only from the tortfeasor and someone acting on behalf of the tortfeasor, such as the tortfeasor's insurance company. *See, e.g.*, *VanLandschoot*, 660 N.W.2d at 156 (holding that payment by tortfeasor's insurance to injured party offsets tortfeasor's liability in property-damage cases). In fact, the caselaw recognizes and provides for double recovery from other sources. For instance, *Ringsred* states that the common-law collateral-source rule "provides that the compensation a plaintiff receives from a third party will not diminish recovery against a wrongdoer." 519 N.W.2d at 217 (quotation omitted). Furthermore, *Ringsred* notes that payments from other sources "are not credited against the tortfeasor's liability, although they cover all or a part of the harm for which the tortfeasor is liable." *Id.* (quotation omitted). Therefore, even if the insurance payment to respondents and the jury award were duplicative, the caselaw allows both payments to respondents.

Appellant notes that *Ringsred*'s application of the common-law collateral-source doctrine to property-damage claims is arguably dicta, citing *Schmuckler v. Creurer*, 585 N.W.2d 425, 428 (Minn. App. 1998), *review denied* (Minn. Dec. 22, 1998). Although

this argument was presented in *Schmuckler*, appellant fails to state that *Schmuckler* went on to "expressly hold that the collateral source statute does not apply to claims for property damage. As we observed in *Ringsred*, the statute's plain language indicates a legislative intent to limit its scope to payments related to physical injury, rather than property damage." *Id.*; *see also VanLandschoot*, 660 N.W.2d at 154 ("[T]he common-law rule controls those cases involving property damage."); *Ringsred*, 519 N.W.2d at 217 (holding common-law rule applies to property-damage claim). Therefore, though appellant appears to suggest that the law is unsettled as to whether the common-law collateral-source doctrine applies to property damage, we conclude that the law is well settled.

Finally, appellant argues that the collateral-source statute "abrogates the common law right to be overcompensated for injuries." But the statute abrogates the common-law doctrine only as to personal-injury claims. *Ringsred*, 519 N.W.2d at 217. Further, appellant mischaracterizes *VanLandschoot*, which is quoted at length in appellant's brief, as an in-depth explanation of the common-law doctrine. Instead, the excerpt applies to the specific instance of duplicate payments to a plaintiff from the tortfeasor and the *tortfeasor*'s insurance. *VanLandschoot*, 660 N.W.2d at 155–56. Here, respondents received payment from *their own* homeowner's insurance company, not the tortfeasor's insurance, in addition to the jury award to be paid by the tortfeasor, which constitute suitable collateral sources.

Co-appellant raises an additional collateral-source argument, contending that the statute's limit on double recovery for personal-injury claims should apply because

respondents testified at trial that a physician treated their mold-related injuries and they were forced to move out of their home because of these injuries. Co-appellant admits that the respondents' claims were primarily for property damage but argues that personal-injury claims were also a component of the litigation. The record, however, reveals that co-appellant did not raise the personal-injury issue with the district court. Additionally, the district court did not address a personal-injury claim in its order. The court of appeals generally does not review issues not raised and not decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Therefore, we need not address co-appellant's personal-injury argument.

The district court did not err by refusing to reduce the verdict based on the collateral-source doctrine.

II

Collateral estoppel precludes parties from relitigating issues litigated and determined in a prior lawsuit. *Nw. Nat'l Life Ins. Co. v. Cnty. of Hennepin*, 572 N.W.2d 51, 53 (Minn. 1997). For collateral estoppel to apply, a four-part test must be satisfied: (1) the issue must be identical to an issue in a previous adjudication; (2) a final judgment on the merits was issued; (3) the estopped party was a party or was in privity with a party to the previous adjudication; and (4) the estopped party received a full and fair opportunity to be heard. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004) (quotation omitted).

Appellant does not clearly set out an argument for collateral estoppel. Its brief cites the purpose of collateral estoppel, but appellant does not cite to or argue the four-

part test that must be satisfied. Without adequate briefing, we may decline to reach an issue. *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997). Additionally, appellant and co-appellant did not raise the issue of collateral estoppel with the district court when they requested that the judgment be reduced, and the district court's order dismissing the motion to reduce the judgment did not address collateral estoppel. We generally do not review issues not raised and not decided by the district court. *Thiele*, 425 N.W.2d at 582. Therefore, we need not address appellant's collateral-estoppel argument.

III

To establish a claim for unjust enrichment, the appellant "must show that the defendant has knowingly received or obtained something of value for which the defendant in equity and good conscience should pay." *City of Maple Grove v. Marketline Constr. Capital, LLC*, 802 N.W.2d 809, 817 (Minn. App. 2011) (quotation omitted). An action for unjust enrichment will lie when it has been established that one party was illegally or wrongfully enriched or in situations where it would be morally wrong for the party to retain the benefit gained at another's expense. *See First Nat'l Bank of St. Paul v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981) (stating that unjust enrichment can mean illegal or unlawful enrichment); *Schumacher v. Schumacher*, 627 N.W.2d 725, 729–30 (Minn. App. 2001) (recognizing that unjust enrichment has been extended to morally wrong acts). Whether a district court grants equitable relief is within the discretion of the district court, which we review for an abuse of discretion. *Citizens State Bank v. Raven Trading Partners, Inc.*, 786 N.W.2d 274, 277 (Minn. 2010).

Appellant and co-appellant argue that the judgment is a windfall because it doubles the recovery received via respondents' insurance settlement, which constitutes unjust enrichment and requires reduction of the judgment. Appellant and co-appellant provide no analysis to support their unjust-enrichment claim. Instead, they simply state the rule without establishing that respondents knowingly received something of value to which they were not entitled or that it would be unjust for respondents to retain the benefit. Appellant and co-appellant provide only a conclusory argument that the alleged windfall to respondents under the collateral-source doctrine constitutes unjust enrichment. But as we explained earlier in this opinion, under the common-law collateral-source doctrine, compensation from a third party does not diminish recovery from a tortfeasor. Thus, we decline to further address these arguments because they are not supported by legal analysis. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address arguments not supported by legal analysis or citation).

The district court did not abuse its discretion by not reducing the verdict based on unjust enrichment.

IV

Preverdict awards are governed by Minn. Stat. § 549.09 (2010), which states, "Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed . . . from the time of the commencement of the action." Minn. Stat. § 549.09, subd. 1(b) (2010). Interest awards

under Minn. Stat. § 549.09 are reviewed de novo. *S.B. Foot Tanning Co. v. Piotrowski*, 554 N.W.2d 413, 420 (Minn. App. 1996), *review denied* (Minn. Dec. 17, 1996).

The district court awarded preverdict interest at 10 percent per year, citing Minn. Stat. § 549.09. In its order, the district court stated that the statute, when amended in 1984, did not replace common-law standards regarding prejudgment interest, citing *Trapp v. Hancuh*, 587 N.W.2d 61, 63 (Minn. App. 1998). The district court further stated that respondents sought preverdict interest under the statute, and it would therefore apply the statutory standards. The district court determined that, because none of the statutory restrictions applied to respondents, they were entitled to interest on the $600,000 verdict.

Appellant and co-appellant argue that the district court erred in awarding respondents preverdict interest because the respondents' damages were not ascertainable and, therefore, cannot be the basis for a prejudgment interest award. Appellant and co-appellant also argue that respondents have requested *prejudgment* interest even though their briefing to the district court and to the court of appeals states that respondents requested *preverdict* interest.[1]

Appellant misstates the law in its brief. Appellant states that damages must be readily ascertainable before a district court can award preverdict interest. But the Minnesota Supreme Court has held that "section 549.09 was amended to allow pre-

[1] The district court refers to "prejudgment" interest in its analysis, but its order grants preverdict interest and its memorandum explicitly states plaintiff is seeking preverdict interest under the statute. Caselaw is not always clear on the distinction between prejudgment and preverdict interest. But for our purposes, where interest is awarded from the date a claim commences, Minn. Stat. § 549.09 governs, and caselaw has consistently held that such interest is awarded regardless of ascertainability.

verdict interest irrespective of a defendant's ability to ascertain the amount of damages for which he might be held liable or to stop the running of interest." *Lienhard v. State*, 431 N.W.2d 861, 865 (Minn. 1988), *see also Schwickert, Inc. v. Winnebago Seniors, Ltd.*, 680 N.W.2d 79, 88 (Minn. 2004) ("The [preverdict] interest statute does not require that the damages be readily ascertainable."); *Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 391 (Minn. App. 2004) ("To properly execute the meaning and purpose of the statute, we hold that [preverdict] interest is available notwithstanding ascertainability of the judgment."), *review denied* (Minn. Aug. 25, 2004). Therefore, damages need not be readily ascertainable for an award of preverdict interest.

The district court did not err in awarding respondents preverdict interest.

V

The district court ordered appellant to pay respondents $600,000 plus preverdict interest. Additionally, the district court order stated that appellant was entitled to recover from co-appellant $150,000 plus interest from January 23, 2009, when appellant filed a third-party claim for contribution against co-appellant. Co-appellant argues that the district court erred when it ordered preverdict interest paid to appellant because the contribution claim does not accrue—and preverdict interest should not be owed—until appellant fulfills the $600,000 judgment.

Minn. Stat. § 549.09 states, "Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed . . . from the time of the commencement of the action." Minn. Stat. § 549.09,

subd. 1(b). Interest awards under Minn. Stat. § 549.09 are reviewed de novo. *S.B. Foot Tanning Co.*, 554 N.W.2d at 420.

The plain language of Minn. Stat. § 549.09 states that preverdict interest is computed from "the time of the commencement of the action." Based on the statute's plain language, an action for contribution begins when a party asserts its right to seek contribution from another party. Here, appellant asserted this right on January 23, 2009, when it filed a third-party complaint against co-appellant. Parties may seek contribution, as appellant did here, before the right to contribution arises. *Grothe v. Shaffer*, 305 Minn. 17, 25, 232 N.W.2d 227, 232 (1975). The district court did not err by ordering preverdict interest on the contribution claim from the date appellant filed its third-party claim.

Affirmed.