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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-1815**

Minnehaha Business Center, LLC,  
Appellant,

vs.

St. Paul Port Authority, Inc.,  
Respondent,

City of St. Paul,  
Defendant.

**Filed April 22, 2013  
Affirmed in part, reversed in part, and remanded  
Connolly, Judge**

Ramsey County District Court  
File No. 62-CV-09-10956

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Considered and decided by Stauber, Presiding Judge; Peterson, Judge; and  
Connolly, Judge.

## UNPUBLISHED OPINION

CONNOLLY, Judge

In this appeal from the district court's grant of respondent's motion for a directed verdict and the denial of appellant's motion for a new trial, appellant argues that the district court (1) erred by denying its motion to amend its complaint and dismissing its inverse-condemnation claim; (2) abused its discretion by excluding the appraisal report and testimony of appellant's expert witness; and (3) abused its discretion by excluding three other forms of evidence.

Because appellant has an adequate legal remedy in breach of contract, the district court did not err by denying appellant's motion to amend its complaint and dismissing its inverse-condemnation claim. But, because the Minnesota Rules of Civil Procedure do not currently provide for the automatic discovery of an opposing party's expert-witness report, the district court abused its discretion by excluding appellant's appraisal report as untimely. Finally, we discern no abuse of discretion in the district court's three additional evidentiary rulings. We therefore affirm in part, reverse in part, and remand for a trial on what remains of appellant's breach-of-contract claim.

### FACTS

At all times relevant to this appeal, appellant Minnehaha Business Center LLC (Minnehaha) and respondent St. Paul Port Authority Inc. owned adjacent properties in an area of St. Paul bordered on the north by Seminary Avenue, on the south by Minnehaha Avenue, on the west by Chatsworth Street, and on the east by Milton Street. The two properties are subject to a reciprocal easement agreement (REA), entered into by the

parties' predecessors in interest on July 8, 1999. The REA was established in favor of two parcels of real property described as Parcel One and Parcel Two.

Robert Arnold, the principal owner of Minnehaha, purchased the northwestern section of Parcel One in July 1999, and conveyed the property to Minnehaha in 2002. The Minnehaha property is bordered on the east by Parcel Two, on the north by Seminary Avenue, on the West by Chatsworth Street, and on the south by an adjacent parcel not involved in this dispute. Because a steep change in grade prevents access to the Minnehaha property from Chatsworth Street, the only direct access to the Minnehaha property is from Seminary Avenue. Alternatively, the Minnehaha property can be accessed indirectly by crossing the adjacent parcel from Minnehaha Avenue to the south or Parcel Two from Milton Street to the east via an ingress and egress easement. The southeastern section of Parcel One is owned by a third party not involved in this dispute.

In May 2008, the Port Authority acquired all of Parcel Two, which consisted of two sections bisected by Seminary Avenue. The Port Authority property to the south of Seminary Avenue is bordered on the east by Milton Street, on the west by the Minnehaha property, and on the south by the southeastern section of Parcel One. The district court found that the Port Authority acquired Parcel Two "with the intent to demolish and remove all of the existing improvements, remediate the property's contaminated condition, construct a new parking facility over the part of Parcel Two covered by Easement Parcel A, and to sell the property to a private industrial user." On July 1, 2010, the Port Authority and City of St. Paul successfully petitioned the city council to vacate

the eastern half of Seminary Avenue between Chatsworth Street and Milton Street in order to connect the two sections of Parcel Two.

According to the REA, Parcel One and Parcel Two are subject to and the beneficiaries of two separate easements: (1) “a non-exclusive easement over and across said Easement Parcel A for vehicular and pedestrian traffic and parking that is normal, usual and customary in nature for a retail facility when space is available for the owner of Parcel Two . . . and for the owners of Parcel One,” and (2) “a non-exclusive easement over, across and through Easement Parcel B for vehicular and pedestrian ingress and egress for the Parcel One owners and Parcel Two owners.” The two easements cover property that is owned by Minnehaha and by the Port Authority, but the easements do not overlap. The REA provides that the owners of Parcel One and Parcel Two shall not interfere with the use of either easement by “locating equipment, barriers, signs, fences, or other property” on the easements or in any other manner that interferes with the purposes of the easements. But the REA allows for certain temporary restrictions as follows:

The owners of Parcel One and Parcel Two shall be entitled to temporarily restrict Parcel One Owners or Parcel Two Owners, only to the extent reasonably required, from access to the Easement Parcels A and B for the purpose of maintaining, repairing, and replacing the asphalt surface, and the lighting, poles, underground wiring and related appurtenances to the parking lot lighting on the Easement Parcel from time to time, as may be reasonably necessary.

On or about May 19, 2009, the Port Authority constructed a chain link fence and concrete jersey barriers around the perimeter of Parcel Two. The Port Authority then

demolished and removed all of the property's existing improvements, remediated the property's contaminated condition, and constructed a new surface parking facility over the section of property lying south of former Seminary Avenue. The Port Authority substantially completed construction of the new parking facility in October 2009.

Minnehaha filed a complaint against the Port Authority and the City in September 2009, alleging five counts: declaratory judgment against the City, violation of 42 U.S.C. § 1983 against both the Port Authority and the City, and tortious interference, nuisance, and breach of contract against the Port Authority. Specifically, Minnehaha alleged that the Port Authority breached the REA by temporarily restricting access to and the free use of the easement parking lot during construction and permanently reducing the number of parking spaces available. On June 29, 2010, the district court issued its first scheduling order, requiring Minnehaha to "disclose all experts and provide information required by the Minnesota Rules of Civil Procedure by August 27, 2010." The order also stated: "If any party has not disclosed their expert(s) and has not provided required information prior to the deadline, the expert testimony will not be allowed at trial." Minnehaha disclosed five experts, including an appraiser, Jeffrey Johnson, on the date of the deadline. According to its disclosure, Johnson would testify as to the market value of Minnehaha's property, including its interest in the easement property, and the damages caused by the interferences alleged in its complaint.

On September 27, 2010, the Port Authority and the City noticed motions for summary judgment, and the Port Authority noticed a motion for a declaratory judgment that it had not breached the REA. On January 18, 2011, in a separate proceeding,

Minnehaha filed a Petition for an Alternative Writ of Mandamus compelling the Port Authority and City to commence condemnation proceedings. Minnehaha also moved to amend its complaint to add an inverse-condemnation claim or, in the alternative, to consolidate the two actions.

On January 21, 2011, the district court granted the City's motion for summary judgment as to Minnehaha's declaratory-judgment claim, granted the Port Authority's motion as to Minnehaha's tortious-interference and nuisance claims, and granted in part and denied in part the Port Authority's motion as to Minnehaha's breach-of-contract claim. The district court concluded that genuine issues of material fact precluded summary judgment as to Minnehaha's temporary-breach-of-contract claim but granted the Port Authority's motion with respect to the reduced number of parking spaces. The district court stayed its decision as to Minnehaha's section 1983 claim, pending its decision on Minnehaha's motion to amend or consolidate, and denied the Port Authority's motion for a declaratory judgment. On March 30, 2011, the district court denied Minnehaha's motion to amend the complaint as to the Port Authority, dismissed Minnehaha's proposed inverse-condemnation claim, and removed the stay and granted the Port Authority's motion for summary judgment on Minnehaha's section 1983 claim. The district court granted Minnehaha's motion to amend the complaint as to the City.

The district court issued a revised scheduling order on November 9, 2011, requiring Minnehaha to make the same disclosures required by its original scheduling order as to any expert witness by January 13, 2012. Minnehaha timely filed an amended expert-witness disclosure, again identifying Johnson as an appraiser retained to testify as

to market value and damages. Upon receipt of Minnehaha's amended disclosure, the Port Authority notified Minnehaha that it believed the disclosure failed to comply with Minn. R. Civ. P. 26.02(e)(1). The Port Authority also requested a copy of Johnson's appraisal report but did not bring a motion before the district court. On February 3, 2012, Minnehaha provided the Port Authority with its second amended expert-witness disclosure, which included more information on the substance of and grounds for Johnson's testimony, but did not provide Johnson's appraisal report. Upon request by the City, Minnehaha voluntarily provided the appraisal report to both the City and the Port Authority on June 22, 2012.

On June 25, 2012, the Port Authority and City filed motions in limine, which the district court heard on July 2, the first day of trial. After hearing from both sides, the district court excluded Johnson's appraisal report and precluded him from testifying at trial for lack of foundation. The district court did so because it believed the report had not been provided in a timely manner in accordance with its scheduling order. The district court also excluded (1) evidence regarding Minnehaha's right of access across a 40-foot strip of city-owned property, (2) evidence from Minnehaha's owner and property manager regarding tenant complaints concerning access to the easement parking lot, and (3) evidence from Minnehaha's traffic engineer concerning safety issues arising from the changes in the easement parking lot.

Following the exclusion of Johnson's report and testimony, Minnehaha and the City settled, and the Port Authority successfully moved for a directed verdict on grounds that, without the appraisal and Johnson's testimony, Minnehaha did not have any

evidence of damages to present at trial. Minnehaha moved for a new trial. Following a hearing, the district court denied the motion. This appeal follows.

## DECISION

### I.

Minnehaha argues that the district court erred by denying its motion to amend its complaint and dismissing its inverse-condemnation claim against the Port Authority under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief could be granted.

“Generally, the decision to permit or deny amendments to pleadings is within the discretion of the district court and will not be reversed absent a clear abuse of discretion.” *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003). But “a district court may properly deny an amendment to a complaint when the additional alleged claim cannot be maintained.” *LeFee v. Winona County*, 655 N.W.2d 662, 668 (Minn. App. 2003), *review denied* (Minn. Mar. 27, 2003). When reviewing a district court’s dismissal of a case for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e), the question before this court is whether the complaint sets forth a legally sufficient claim for relief. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). “The standard of review is therefore de novo.” *Id.* “The reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party.” *Id.*

When a governmental entity has taken property without formally using its eminent-domain power, the property owner has a cause of action for inverse



condemnation. See *Alevizos v. Metro. Airports Comm'n of Minneapolis and St. Paul*, 298 Minn. 471, 477, 216 N.W.2d 651, 657 (1974). “Actions for inverse condemnation must be brought to the court through an action in mandamus.” *Nolan and Nolan v. City of Eagan*, 673 N.W.2d 487, 492 (Minn. App. 2003), *review denied* (Minn. Mar. 16, 2004). But “[m]andamus is an extraordinary remedy that is available only to compel a duty clearly required by law.” *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004) (citation omitted). “In order to obtain mandamus relief, a petitioner must show that the defendant: (1) failed to perform an official duty clearly imposed by law; (2) that, as a result, the petitioner suffered a public wrong specifically injurious to the petitioner; and (3) that there is no other adequate legal remedy.” *Id.* (citations omitted).

Minnehaha filed both a petition for an alternative writ of mandamus compelling the Port Authority to initiate condemnation proceedings and a motion to amend its complaint or, in the alternative, to consolidate the two actions. Following a hearing, the district court denied Minnehaha’s motion to amend its complaint and dismissed Minnehaha’s petition for an alternative writ of mandamus, concluding that (1) Minnehaha failed to state a claim upon which relief could be granted because the Port Authority did not have an official duty to initiate condemnation proceedings and (2) Minnehaha failed to establish that it did not have another adequate legal remedy. Minnehaha challenges both conclusions.

## A.

Minnehaha argues that the Port Authority did have an “official duty” to initiate condemnation proceedings because “[w]hen a governmental body takes or damages private property, it has a Constitutional obligation—an ‘official duty’—to pay ‘just compensation’ for what it has taken or damaged.” The Minnesota Constitution does provide that “[p]rivate property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.” Minn. Const. art. I, § 13. But mandamus is a proper remedy only “to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.” *Alevizos*, 298 Minn. at 492, 216 N.W.2d at 664 (quoting Minn. Stat. § 586.01).

In *Alevizos*, a group of property owners residing under or near the take-off and landing flight paths for the Minneapolis-St. Paul International Airport filed a petition for writ of mandamus to compel the Metropolitan Airports Commission (MAC) to institute condemnation proceedings, arguing that their lands had been taken or damaged by the operation of aircraft directly over or near their properties. *Id.* at 473, 216 N.W.2d at 654-55. After analyzing whether MAC’s alleged activities constituted a taking of private property, the Minnesota Supreme Court considered whether the statute governing MAC gave it a clear legal duty to institute condemnation proceedings. *Id.* at 491-93, 216 N.W.2d at 664-65. In other words, MAC had to have the power or authority to acquire the property interests at issue in order to be compelled to initiate such proceedings, regardless of whether a taking had occurred. *See id.* at 493, 216 N.W.2d at 665.

Minnehaha was thus required to show that the Port Authority had the power or authority to acquire Minnehaha's property rights in the easement property before it could obtain mandamus relief compelling such action. The Port Authority is established by Minnesota statute and has the right to "acquire under eminent domain property of any kind within the port district needed by it for public use." Minn. Stat. § 469.055, subd. 8 (2012). But it "must exercise the power of eminent domain in accordance with the provisions of [Chapter 117], including all procedures, definitions, remedies, and limitations." Minn. Stat. § 117.012, subd. 1 (2012). One such requirement is that "[e]minent domain may only be used for a public use or public purpose." *Id.*, subd. 2 (2012). Public use and public purpose are defined exclusively as

- (1) the possession, occupation, ownership, and enjoyment of the land by the general public, or by public agencies;
- (2) the creation or functioning of a public service corporation;
- or
- (3) mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of a public nuisance.

Minn. Stat. § 117.025, subd. 11(a) (2012). Further, the statute provides that "[t]he public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, do not by themselves constitute a public use or public purpose." *Id.*, subd. 11(b) (2012).

The Port Authority argues that it voluntarily acquired the property involved in this case for "industrial redevelopment" and therefore did not have the authority to acquire Minnehaha's property rights under the REA by eminent domain. Minnehaha argues that the Port Authority had an "official duty" to initiate condemnation proceedings because it

purchased the property at issue in this case, and ultimately took Minnehaha's rights in the same property, "with the intent to . . . remediate the property's contaminated condition." See Minn. Stat. § 117.025, subd. 11(a)(3) (defining "public use" and "public purpose" to include "remediation of an environmentally contaminated area). Given the Port Authority's stated purpose for its actions, the district court erred in concluding that the Port Authority did not have an "official duty" to initiate condemnation proceedings.

### **B.**

Minnehaha also challenges the district court's conclusion that its inverse-condemnation claim was governed by the terms of the REA and thus that Minnehaha had failed to establish that it had "no other adequate legal remedy." The Port Authority argues that the district court correctly concluded that mandamus was inappropriate because Minnehaha "had another adequate legal remedy, namely a contract claim." We agree.

Minnehaha relies on *Wilson v. Ramacher*, 352 N.W.2d 389 (Minn. 1984) and similar cases to argue that it has a right to present its inverse-condemnation and breach-of-contract claims simultaneously. In *Wilson*, a landowner commenced suit, claiming that the owners and developers of land to the north negligently caused surface water runoff to be channeled onto his land and that the owners of land to the south blocked the natural flow of surface water off his land. *Id.* at 391-92. The landowner also sued the city for negligence and trespass. *Id.* at 392. Although the landowner did not plead an inverse-condemnation claim, the supreme court noted that his claims alleged the kind of damage that constitutes a taking and that would afford him the remedy of inverse

condemnation. *Id.* at 394. As a result, the supreme court reversed and remanded the case to the district court so the landowner could amend his complaint to add an inverse-condemnation claim. *Id.* at 395.

Similarly, in *Nolan*, a landowner filed a petition for writ of mandamus, seeking an order compelling condemnation proceedings, and a separate complaint alleging trespass, negligence, nuisance, and violation of due process. 673 N.W.2d at 491. After determining that the district court erred in concluding that the landowner failed to state a takings claim, this court considered whether dismissal was nevertheless warranted because the landowner had another adequate remedy at law. *Id.* at 493. Noting that legal remedies are necessarily inadequate if a taking occurred, this court concluded that the district court erred in dismissing the landowner's mandamus action on the ground that there was an adequate legal remedy. *Id.* at 494. This court further held that "a petitioner is permitted to simultaneously pursue an inverse condemnation claim by way of a petition for mandamus, and alternatively, tort claims." *Id.* at 495.

Although conceding that it has no right to recover duplicative damages, Minnehaha contends that it can present both a breach-of-contract claim and an inverse-condemnation claim as alternative grounds for recovery. But *Wilson* and *Nolan* involved alternative tort claims, not breach-of-contract claims, and Minnehaha has not presented any legal authority for extending the rule beyond the tort context.

Moreover, the district court's conclusion is supported by *Scherger v. N. Natural Gas Co.*, 575 N.W.2d 578 (Minn. 1998). In *Scherger*, a landowner and a gas utility company, which held easement rights across the landowner's property, disagreed as to

whether the company could install a new pipeline at a different location within the easement under the terms of the easement agreement. *Id.* at 579. The landowner petitioned for a writ of mandamus to require the company to initiate condemnation proceedings in order to replace the pipeline. *Id.* In a footnote at the outset of the opinion, the court noted that mandamus was improper:

A writ of mandamus is an extraordinary remedy available to compel or restrain action by a judicial or quasi-judicial body, particularly where there exists no adequate remedy at law. The essence of this action was the request for a judicial declaration as to the scope and validity of the 1931 agreement, and therefore was not appropriate for a writ of mandamus, however, we need not correct the procedure.

*Id.* at 579 n.1 (citations omitted). In other words, the primary dispute was over the terms of the easement agreement, and thus the landowner had a contractual remedy.

The facts in *Scherger* are similar to the facts in this case. Here, the primary dispute is whether the Port Authority breached the REA by obstructing the easement parking lot for a period of months and by permanently reconfiguring the parking lot. Minnehaha failed to allege any facts to suggest that the property rights underlying its claims exist independently of the REA. Rather, the essence of Minnehaha's inverse-condemnation claim is a request for a judicial declaration as to the scope of the REA and the Port Authority's compliance therewith. Accordingly, Minnehaha's remedies lie in breach of contract, and the district court did not err when it determined that mandamus was not appropriate in this case.

## II.

Minnehaha next argues that the district court abused its discretion by excluding Minnehaha's expert Jeffrey Johnson's appraisal report as untimely and then by precluding Johnson from testifying at trial on grounds that, absent the appraisal report, his testimony would lack foundation. A district court's imposition of sanctions for failure to disclose information regarding expert witnesses will be reversed on appeal only if it is shown that the district court abused its discretion. *Dennie v. Metro. Med. Ctr.*, 387 N.W.2d 401, 404 (Minn. 1986). And "[a] district court's evidentiary ruling on the admissibility of an expert opinion rests within the sound discretion of the [district] court and will not be reversed unless it is based on an erroneous view of the law or it is an abuse of discretion." *Gross v. Victoria Station Farms, Inc.*, 578 N.W.2d 757, 760 (Minn. 1998).

Discovery of expert information is controlled by Minn. R. Civ. P. 26.02(e), which provides in relevant part:

Discovery of facts known and opinions held by experts, otherwise discoverable pursuant to Rule 26.02(a) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1)(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (B) *Upon motion, the court may order further discovery by other means . . . as the court may deem appropriate.*

(Emphasis added). A party thus has an absolute right to obtain four categories of expert information from an opposing party through interrogatories: (1) the identity of each expert, (2) the subject matter of each expert’s testimony, (3) the substance of the facts and opinions to which each expert is expected to testify, and (4) a summary of the grounds for each expert’s opinions. *See id.*

But the plain language of rule 26.02(e)(1) does not provide for the automatic discovery of an expert’s report. Rather, discovery of facts known and opinions held by experts may be obtained only through interrogatories, and to obtain additional expert information—e.g., an expert’s report—a party must move the court for further discovery. *See* 1A David F. Herr & Roger S. Haydock, *Minnesota Practice*, § 26.20(1) (5th ed. 2012) (noting that, while it may be common practice for parties to exchange expert reports, the provisions of Rule 26.02(e) “provide the exclusive means to obtain discoverable information from experts”). This is a major distinction from the federal rule, which mandates that a party automatically disclose the identity of any expert witness it may use at trial along with “a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case.” *See* Fed. R. Civ. P. 26(a)(2).<sup>1</sup>

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<sup>1</sup> Effective July 1, 2013, Minn. R. Civ. P. 26.01 will be amended to mirror the federal rule governing the disclosure of expert testimony to require the same automatic disclosure of “a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case.” *See* Order Adopting Amendments to the Rules of Civil Procedure and General Rules of Practice Relating to the Civil Justice Reform Task Force (Minn. Feb. 4, 2013). This impending amendment supports our conclusion that the automatic disclosure of an expert witness report is not required by the current Minnesota Rules of Civil Procedure.



Rule 26.02(e)(1)(A) “has as its basis the difficulty in cross-examining an expert at trial where there is a lack of general information regarding the nature and content of his opinion, and the need for proper trial preparation in anticipation of the expected testimony of opposing experts.” *Phelps v. Blomberg Roseville Clinic*, 253 N.W.2d 390, 393 (Minn. 1977) (construing Minn. R. Civ. P. 26.02(4), predecessor to Minn. R. Civ. P. 26.02(e)(1)(A)). But the rule requires disclosure of “general information,” not all information, much less an expert’s entire report. *See Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 191 (Minn. 1990) (“The ‘substance’ and ‘summary’ language of both the rule and [Minn. Stat. § 145.682] suggest a more general disclosure requirement.”). And, “[i]f further discovery of the expert’s findings and conclusions is to be had, it must be by a court order.” Minn. R. Civ. P. 26.02 1975 advisory comm. note, subd. (4).

Here, the district court’s revised scheduling order, dated November 9, 2011, required that Minnehaha “disclose all experts and provide information required by the Minnesota Rules of Civil Procedure by January 13, 2012.” Minnehaha timely provided the Port Authority with an amended expert-witness disclosure, which identified Johnson as an expert witness retained to testify as to market value and damages and briefly disclosed the substance and grounds for his opinions. Upon receipt of Minnehaha’s amended disclosure, the Port Authority notified Minnehaha that it believed the disclosure concerning Johnson failed to comply with Rule 26.02(e)(1). Minnehaha promptly provided the Port Authority with a second amended expert-witness disclosure on

February 3, 2012, which included more detailed information on the substance and grounds for Johnson's testimony.

Despite Minnehaha's timely expert-witness disclosure, the Port Authority argues, and the district court agreed, that Minnehaha "failed to disclose the substance of the facts and opinions or provide a summary of the grounds for each opinion of its expert." During the hearing on the Port Authority's motions in limine and in its memorandum in support of its order denying Minnehaha's motion for a new trial, the district court indicated that it did not believe Minnehaha's disclosures contained sufficient information for the Port Authority to prepare for cross-examination. We disagree.

Minn. R. Civ. P. 26.02(e)(1)(A) obligates a party "to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion." Minnehaha's second amended expert-witness disclosure complied with these requirements. Minnehaha disclosed that Johnson would testify that Minnehaha's property, including its interest in the REA property, had a fair market value of approximately \$1.25 million before interferences and a diminished market value of approximately \$820,000 after interferences. Further, Minnehaha disclosed that Johnson used an income approach, a sales comparison approach, and a cost approach to value in reaching his opinions and summarized Johnson's damages calculations. Therefore, the district court abused its discretion to the extent it concluded that Minnehaha's expert-witness disclosure did not satisfy the rule.

Even with Minnehaha's timely compliance with the district court's scheduling order and Rule 26.02(e)(1), the district court excluded Johnson's appraisal report as untimely. But the district court's scheduling order was limited to the information required by the Rules of Civil Procedure, and the Port Authority did not bring a motion for additional discovery beyond the interrogatories allowed by the rules and expert-witness disclosure ordered by the court.<sup>2</sup> And there was no court order granting further discovery. Therefore, based on the plain language of Rule 26.02(e)(1)(A) and the circumstances of this case, the district court abused its discretion when it determined that appellant failed to comply with the rules of discovery and its scheduling order and excluded the report as a sanction for not being provided in a timely manner.

Because the district court abused its discretion by concluding that Minnehaha's second amended expert-witness disclosure was deficient and its disclosure of Johnson's appraisal report was untimely, we reverse and remand for trial on what remains of Minnehaha's breach-of-contract claim and direct that Johnson's appraisal report be admitted and that Johnson be permitted to testify at trial on that claim.

### III.

Minnehaha also challenges the district court's exclusion of (1) evidence regarding Minnehaha's right of access across a 40-foot strip of city-owned property, (2) evidence

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<sup>2</sup> The Port Authority's reliance on *City of Moorhead v. Red River Valley Coop. Ass'n*, 811 N.W.2d 151 (Minn. App. 2012), *review granted* (Minn. Apr. 17, 2012), is misplaced. In *City of Moorhead*, this court determined that the district court did not abuse its discretion by excluding a party's expert report as untimely and prejudicial to the opposing party. *Id.* at 161. But the scheduling order in *City of Moorhead* established a deadline for the exchange of expert reports. *See id.* No deadline was established here.

from Minnehaha’s owner and property manager regarding tenant complaints concerning access to the easement parking lot, and (3) evidence from Minnehaha’s traffic engineer concerning safety issues arising from the changes in the easement parking lot. “The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion.” *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). “In the absence of some indication that the [district] court exercised its discretion arbitrarily, capriciously, or contrary to legal usage, the appellate court is bound by the result.” *Id.* at 46.

**A.**

Minnehaha first argues that the district court abused its discretion by excluding evidence regarding Minnehaha’s right of access across the 40-foot strip of city-owned property directly north of the easement parking lot. Minnehaha contends that such evidence is relevant to its breach-of-contract claim against the Port Authority because “[b]y barricading and then reconstructing the Easement Parking Lot, the Port Authority wrongfully prevented Minnehaha’s tenants and patrons from accessing Minnehaha’s property via Seminary and the 40-foot strip.”

But the REA does not provide Minnehaha with ingress and egress rights between Seminary Avenue and the easement parking lot. The REA created two separate easements: (1) “a non-exclusive easement over and across said Easement Parcel A for vehicular and pedestrian traffic and parking that is normal, usual and customary in nature for a retail facility when space is available,” and (2) “a non-exclusive easement over,

across and through Easement Parcel B for vehicular and pedestrian ingress and egress.” And the two easements do not overlap. Therefore, as the Port Authority points out, “Easement Parcel A does *not* confer upon the owners the benefit or the burden of ingress or egress over and through a substantial portion of each owner’s property. Rather, Easement Parcel B fulfills this role.”

Accordingly, the district court did not abuse its discretion by excluding evidence as to Minnehaha’s right of access across the 40-foot strip of city-owned property.

### **B.**

Minnehaha next argues that the district court abused its discretion by excluding evidence from Minnehaha’s owner and property manager regarding tenant complaints concerning access to the easement parking lot. At the motion-in-limine hearing, Minnehaha explained that the intended testimony from its owner and property manager “would simply be that they have received complaints from tenants regarding the closing of Seminary [Avenue].” Minnehaha contends that such complaints are relevant to prove the negative impact of the Port Authority’s closing and reconstruction of the easement parking lot and the impact on its property’s market value.

Because any evidence of complaints concerning the reduction in access to the easement parking lot as a result of the closing of Seminary Avenue is irrelevant to Minnehaha’s breach-of-contract claim against the Port Authority, we affirm the district court’s exclusion of such evidence.

### C.

Finally, Minnehaha argues that the district court abused its discretion by excluding evidence from Minnehaha's traffic engineer concerning safety issues arising from the changes in the easement parking lot. Specifically, Minnehaha sought to have its expert testify as to dangerous sightlines at the intersection of Chatsworth Street and Pierce Butler Route. The district court said, "[a]s far as . . . sightlines from Pierce Butler Route to Chatsworth, I will exclude that."

Besides arguing that its expert was qualified to testify as an expert witness, Minnehaha does not explain how such testimony would be relevant to its breach-of-contract claim. Further, Minnehaha does not explain how it is the Port Authority that is responsible for diverting traffic from Milton Street to Chatsworth Street. It was the City that vacated Seminary Avenue, and there is no evidence that Minnehaha's access to Milton Street by way of the ingress and egress easement has been affected. Accordingly, we discern no abuse of discretion.

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