STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1722

Anthony Patrick Huber,
Appellant,

vs.

Jason R. Vohnoutka, et al.,
Respondents,

Darlene Heimerl, et al.,
Defendants.

Filed July 31, 2017
Affirmed
Ross, Judge

Anoka County District Court
File No. 02-CV-13-3735

Steven E. Uhr, Law Office of Steven E. Uhr, PLLC, Bloomington, Minnesota (for appellant)

James S. Reece, Wynne C.S. Reece, Reece Law, L.L.C., Minneapolis, Minnesota; and

Kevin M. Mosher, Thompson Coe Cousins and Irons, LLP, St. Paul, Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Hooten, Judge; and Kirk, Judge.

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

ROSS, Judge

Attorney Jason Vohnoutka obtained therapy records about Anthony Huber while representing the mother of Huber's child in a custody dispute. In a trial to determine whether Vohnoutka violated the Minnesota Health Records Act by obtaining Huber's records using false pretenses, the district court excluded certain evidence and rejected Huber's proposed jury instructions. It also denied Huber's motion for a new trial. On appeal, Huber challenges the district court's denial of his motion for a new trial. He contends that the district court improperly excluded relevant evidence and failed to give specific instructions that he says are required by the opinion of this court in his prior appeal. Because the district court acted within its discretion in excluding evidence and framing the instructions, we affirm.

FACTS

After a custody dispute between Anthony Huber and his child's mother, Huber sued the mother's attorney, Jason Vohnoutka, alleging that he violated the Minnesota Health Records Act by using false pretenses to obtain Huber's therapy records. We presented the underlying facts and procedural history in our previous opinion remanding the case to the district court for trial. *See Huber v. Vohnoutka*, No. A14-1403, 2015 WL 1514193, at *1–3 (Minn. App. Apr. 6, 2015).

The parties submitted proposed jury instructions and Vohnoutka filed a motion in limine to exclude evidence. The district court partially granted Vohnoutka's motion, prohibiting Huber from referring to Minnesota's Rules of Professional Conduct and the

Health Insurance Portability and Accountability Act (HIPAA). *See* Pub. L. No. 104-191, 110 Stat. 1936 (1996) (codified primarily in United States Code Titles 18, 26, 29, and 42). The district court also rejected or revised several of Huber's proposed jury instructions.

The jury rejected Huber's primary factual allegation in a verdict finding that Vohnoutka did not intentionally use false information to induce the therapist to release Huber's records. Huber unsuccessfully moved for a new trial, arguing that the district court erroneously granted Vohnoutka's motion in limine and improperly refused to accept Huber's proposed instructions. He appeals.

D E C I S I O N

Huber argues that the district court's erroneous evidentiary rulings and instructions require a new trial under Minnesota Rule of Civil Procedure 59.01(f). We review a district court's denial of a new-trial motion for an abuse of discretion. *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 629 (Minn. 2012). For the following reasons, we see no reversible error.

I

Huber contends that the district court erred by granting Vohnoutka's motion in limine to exclude evidence. We review evidentiary rulings for an abuse of discretion. *Kelly v. Ellefson*, 712 N.W.2d 759, 766 (Minn. 2006). Huber is entitled to a new trial if he can demonstrate that the district court's exclusion of evidence amounts to prejudicial error. *See Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997).

Huber sought to introduce evidence regarding the Minnesota Rules of Professional Conduct for attorneys and to instruct the jury on specific rule provisions. He also intended

to introduce evidence concerning how the therapist violated HIPAA. The district court deemed the risk of confusion and unfair prejudice too high and the probative value of this evidence too low to be admissible. This approach tracks the district court's duty in applying Minnesota Rule of Evidence 403, which provides that "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Given the limited allegations in Huber's complaint and the district court's broad discretion on evidentiary matters, *see Kelly*, 712 N.W.2d at 766, we are satisfied that the court acted well within its discretion by deeming the particulars of state ethical rules and federal healthcare privacy laws and regulations too confusing to be accepted as evidence.

Huber resists this result based on a totality-of-the-circumstances argument. He asserts that being able to present evidence demonstrating that Vohnoutka violated professional-conduct rules would have given the jury necessary information to decide whether his conduct was intentionally deceptive. He similarly asserts that evidence regarding HIPAA would have shown that Vohnoutka "duped" the therapist into violating HIPAA, revealing Vohnoutka's state of mind. As we have previously indicated (and as the district court instructed the jury), Huber had the burden of proving that Vohnoutka "intentionally used false, misleading, or fraudulent information or pretense or pretext as a means of inducing" the therapist to release Huber's medical records. *See Huber*, 2015 WL 1514193, at *6. We think it is reasonable that the district court thought that detailed references to state professional-conduct rules and federal HIPAA provisions would make improperly prejudicial suggestions or confuse the jury about Huber's claim, which

depended instead on the application of the state health records law. Huber fails to establish that his intended intensive explanations of the ancillary state rules, federal laws, and federal regulations are so probative on any element of his claim that the district court acted outside its discretion by believing that their inclusion would be disproportionately prejudicial or confusing. We need not consider whether the evidentiary decision prejudiced Huber's case, but we note that the evidence's probative value seems so slight that its omission almost certainly had no bearing on the outcome.

II

Huber also argues that the district court erroneously rejected his proposed jury instructions. The district court has broad discretion and considerable latitude in drafting specific instructions, and we will not reverse if the instructions fairly and correctly state the law. *Daly v. McFarland*, 812 N.W.2d 113, 122 (Minn. 2012). A party is entitled to a specific instruction if the evidence supports it. *Id.* But a district court cannot, "in charging the jury, single out and give undue prominence and emphasis to particular items of evidence, or circumstances, favorable to one of the parties only." *Kincaid v. Jungkunz*, 109 Minn. 400, 402, 123 N.W. 1082, 1083 (1910). A new trial is not required unless the jury instruction is erroneous and the error's effect is either prejudicial or undetermined. *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 159 (Minn. 2002).

Huber's proposed jury instructions stated that Vohnoutka did not provide prior notice to Huber of a subpoena enclosed in a letter to the therapist; that Vohnoutka should have used the process in Minnesota Rule of Civil Procedure 35, rather than rule 45, to obtain the medical records; that the consent form allowed the therapist to release Huber's

medical records only to a custody evaluator; and that an attorney must obey court orders. Huber lifted much of his proposed language from our prior opinion, and by that virtue he asserts that we already made these determinations "as a matter of law."

Some of Huber's proposed instructions appear to be more fact findings than legal instructions. Huber argues that these purported findings from our prior opinion should have been included in the instructions as part of the "law of the case." He confuses law with fact and also misapplies the law-of-the-case doctrine. The doctrine refers to a discretionary practice between appellate and district courts to effectuate finality of appellate court decisions. *Loo v. Loo*, 520 N.W.2d 740, 744 n.1 (Minn. 1994). The doctrine generally applies after an appellate court decides a *legal* question and remands the case to the district court. *Brezinka v. Bystrom Bros., Inc.*, 403 N.W.2d 841, 843 (Minn. 1987). The answer to that *legal* question may become the law of the case and cannot be re-litigated at trial or reexamined on a future appeal. *Sigurdson v. Isanti Cty.*, 448 N.W.2d 62, 66 (Minn. 1989).

Huber relies primarily on two federal cases to assert that the doctrine also binds a district court to factual findings made by an appellate court. *See Mega Life & Health Ins. Co. v. Pieniozek*, 585 F.3d 1399, 1405 (11th Cir. 2009); *United States v. Rodriguez*, 259 F. App'x 270, 278 (11th Cir. 2007). Even if we were bound by the reasoning of this single federal jurisdiction, *but see Simmons v. Fabian*, 743 N.W.2d 281, 290 n.5 (Minn. App. 2007) ("[W]e are bound only by decisions of the Minnesota Supreme Court and the United States Supreme Court."), neither case would support Huber's position. In *Rodriguez*, the Eleventh Circuit ruled that its previous affirmance of the district court's criminal sentencing stood as law of the case precluding the defendant from challenging his

sentencing in the present appeal. 259 F. App'x at 278–79. This was a legal, not factual, consideration. *Mega Life* helps Huber even less. In *Mega Life*, the court held that its statement in a prior opinion, which reviewed the district court's grant of summary judgment, did *not* constitute the law of the case. 585 F.3d at 1405. And contrary to Huber's cited federal authority, Minnesota courts do not apply the doctrine to answer purely *factual* questions. *See Dean Van Horn Consulting Assocs., Inc. v. Wold*, 395 N.W.2d 405, 408 (Minn. App. 1986).

Huber also misreads our prior opinion in this case. His first appeal challenged the district court's grant of summary judgment. *Huber*, 2015 WL 1514193, at *3. On appeal from a summary-judgment order, we do not make fact findings but determine whether genuine issues of material fact exist. *See Nord v. Herreid*, 305 N.W.2d 337, 339 (Minn. 1981) ("[I]t is no part of the court's function to decide issues of fact but solely to determine whether there is an issue of fact to be tried." (quotation omitted)). In Huber's first appeal, our review required us to consider the evidence and any reasonable inferences in the light most favorable to Huber as the non-moving party. *Huber*, 2015 WL 1514193, at *3. Our opinion reflects this standard, for instance, when we stated that "*Huber also points out* that Vohnoutka did not give him notice of the subpoena." *Id.* at *7 (emphasis added). The statements that Huber refers to in his proposed instructions must be read in the context of the summary-judgment record and our limited holding that the district court erred by granting summary judgment. *Id.* at *5–7. In that case we were not *finding* facts; we were *assuming* facts in Huber's favor to determine whether there were triable questions for a jury. In sum, Huber's mischaracterization of Minnesota's law-of-the-case doctrine follows

from both his misunderstanding of the type of questions the doctrine applies to and his misunderstanding of what we decided in his prior appeal.

Huber insists that the district court's instructions of law limited the jury's ability to assess the complete circumstances. The argument is unavailing because Huber's rejected instructions either risked confusing the jury about disputed facts or legal rules and procedures, or they were more clearly and concisely already addressed in other instructions. *See Schlukebier v. LaClair*, 268 Minn. 64, 67, 127 N.W.2d 693, 695 (1964) (stating that district court may refuse proposed specific instruction if substance is adequately covered and conveyed in district court's instruction). For example, Huber's proposed instruction that "Vohnoutka did not give prior notice of the subpoena to Huber or to Huber's attorney" is a statement of fact on a disputed-fact question for the jury. The proposed instructions regarding rule 35 and an attorney's obligation to obey court orders risked confusing the jury and were only minimally relevant to the factual questions. The proposed instruction about the consent form was nearly identical to the instruction given, and it implied the same premise that the therapist was not authorized to release the disputed records to Vohnoutka.

We have carefully considered all of Huber's arguments and hold that the district court did not abuse its discretion.

Affirmed.