STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1815

Bryan Scherping, d/b/a JBR Farms; et al.,
Appellants,

vs.

Amy Scherping, et al., defendants
and third party plaintiffs,
Respondents,
vs.

Bryan Scherping, et al.,
third party defendants,

Loren Scherping, et al.,
third-party defendants,
Co-Appellants

Filed July 3, 2017
Affirmed as modified
Worke, Judge

Stearns County District Court
File No. 73-CV-14-3597

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Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Kirk, Judge.

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

WORKE, Judge

Appellants and co-appellants challenge the district court's interpretation of the parties' settlement agreement and distribution of farming equipment. Appellants claim that the district court erred by failing to award them fixtures to real property and $400,000 in receivership funds under the settlement agreement. Appellants also argue that the district court erred by failing to determine whether a partnership existed between appellants and respondents. Co-appellants argue that the district court erred by failing to make findings of fact in its final distribution order and by failing to award co-appellants items that were conceded to them by respondents. We affirm as modified.

FACTS

This case involves a family dispute over farmland and farming equipment. Co-appellants Loren and Jane Scherping are the parents of respondent Jason, appellants Bryan and Randy, and third-party defendants Lori, Sandy, and Kristin. Co-appellant LaVern is Loren's brother, and respondent Amy is Jason's wife.[1]

The dispute centers on three parcels of real property: the CJS Ranch Trust property, the 162-acre property, and the 51-acre property. The CJS Ranch Trust property consists of 240 acres of farmland. Prior to this litigation, Jason, Bryan, Randy, Lori, Sandy, and Kristin each had an ownership stake in the CJS Ranch Trust property.

[1] For ease of reference, this opinion refers to individual parties by their first name. In the decision section of this opinion, the parties are primarily referred to as appellants, co-appellants, and respondents.

The 162-acre property was originally owned by Loren and Jane. They forfeited the property to the Federal Internal Revenue Service (IRS) in a foreclosure action, and Jason purchased the property at auction. Jason also acquired the nearby 51-acre property.

In April 2014, Bryan and Randy sued Jason and Amy. The complaint alleged that Jason holds title to the 162-acre property and the 51-acre property on behalf of JBR Farms. Bryan and Randy claimed that JBR Farms was formed in 1998 by Jason, Bryan, and Randy to farm the three properties. Bryan and Randy alleged that Jason withheld partnership profits from them for several years. The complaint sought dissolution of the partnership and an accounting of all JBR Farms' assets and liabilities.

Jason and Amy subsequently filed a separate lawsuit against Bryan, Randy, and the other parties in this matter, claiming that Jason was the "sole owner and operator" of JBR Farms. They also claimed that Loren, LaVern, Bryan, and Randy trespassed and converted their property. The district court consolidated the cases and appointed a receiver to "administer the assets of JBR Farms."

In October 2015, the parties reached a settlement agreement. The district court restated the parties' agreement in an October 30, 2015 order. The order states that "Jason shall assign his entire interest in the CJS Ranch Trust real property and fixtures to Bryan and Randy." It further states that "[t]he CJS Ranch Trust real property and fixtures shall be owned by Bryan, Randy, Sandy, and Kristin free and clear of any claim by any other parties." It awards Bryan and Randy "100% of the [r]eceiver funds (approximately $400,000.00), less and with the [r]eceiver paying from those funds all taxes for 2014 and 2015 and costs relating to JBR Farms (such as property taxes, income taxes from sales of

commodities, etc.)." The settlement awards Jason the 162-acre property and allows him to "keep all the new farm equipment purchased, as shown on his tax returns; excluding Imperial Investment equipment." Ownership of the Imperial Investment equipment and other personal property not divided in the settlement was reserved for future decision by the district court.

After the settlement was reached, a court trial was held on the Imperial Investment equipment, the farming equipment that Loren, Jane, and LaVern sold to Imperial Investments Inc. Jason leased and later purchased the equipment from Imperial Investments. During the trial, Loren, Jane, and LaVern testified that they never sold the equipment to Imperial Investments. Although there was documentary evidence of the sale and they testified in other litigation that the sale took place, they argued that the sale was a sham designed to prevent the IRS from seizing the equipment. In its January 20, 2016 order, the district court found this testimony not credible and awarded the Imperial Investment equipment to Jason and Amy.

Bryan, Randy, and the sibling third-party defendants did not participate in the court trial because they made no claim to the Imperial Investment equipment; however, they did object at trial to the district court receiving evidence relating to fixtures on the CJS Ranch Trust property, arguing that the settlement agreement awarded them these fixtures. The district court sustained the objection but ruled that it was moot because the January 20, 2016 order did not address any such fixtures.

Jason and Amy then moved to enforce the January 20, 2016 order. Bryan, Randy, and the sibling third-party defendants renewed their objection, arguing that the order

erroneously awarded fixtures on the CJS Ranch Trust property to Jason and Amy. They listed specific farm equipment distributed by the order that they claimed as fixtures. On April 28, 2016, the district court issued an order finding that none of the claimed items were fixtures. The district court ordered the items transferred to Jason and Amy.

In its January 20, 2016 order, the district court also included a list of items that remained undistributed. In the event that the parties failed to reach an agreement as to the distribution of these items, the district court ordered them to submit memoranda addressing: 1) whether or not JBR Farms is a valid partnership; 2) if so, which parties were members of that partnership; and 3) as to each piece of property, the owner of the property and whether the property qualifies as a fixture.

The parties failed to reach an agreement, and after reviewing the parties' final submissions, the district court distributed the remaining property in an October 25, 2016 order. The order included no findings of fact, and the district court declined to determine whether JBR Farms was a partnership. The district court awarded Jason and Amy the items listed on Jason's tax returns, duplicates of Imperial Investment equipment, and other items not mentioned in the other parties' submissions. Loren, Jane, LaVern, and the sibling third-party defendants were awarded items listed in section IV of their submissions and items conceded to them at trial. The remaining items were awarded to Bryan and Randy. This appeal followed.

D E C I S I O N

Fixtures

Appellants argue that the district court erred by awarding respondents farm equipment that appellants claim are fixtures on the CJS Ranch Trust property. Appellants were awarded the CJS Ranch Trust property and "fixtures" in the settlement agreement.

As a threshold issue, respondents argue that appellants' claims to the farm equipment must be denied because appellants waived their right to appeal in the settlement agreement. "[W]aiver is the intentional relinquishment of a known right." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 367 (Minn. 2009) (quotations omitted). "Settlement of claims is encouraged as a matter of public policy." *Voicestream Minneapolis, Inc. v. RPC Props., Inc.*, 743 N.W.2d 267, 271 (Minn. 2008). "A settlement agreement is a contract." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 581-82 (Minn. 2010). When the language of a contract is clear and unambiguous, this court enforces the agreement of the parties as expressed in the contract. *Id.* at 582. A contract is ambiguous if it is susceptible to more than one reasonable interpretation. *Id.* This court reviews de novo whether a contract is ambiguous. *Id.*

The district court's order reiterating the parties' settlement agreement states that "[t]he parties wish to settle all of their differences." It also states that "[t]he parties have agreed to a complete settlement of all of the disputes existing between them." The order calls the settlement a "full and final settlement, compromise and release of all claims."

But the settlement agreement also contemplates more litigation. It does not divide all property, and the order states that "[t]he only claims reserved for further litigation

relate[] to ownership over the Imperial Investment equipment . . . or otherwise disputed by the parties shall be submitted to the [c]ourt for final decision." It also states, "[a]ll other equipment and tools not specified herein shall be divided by agreement of the parties with the [c]ourt making the final decision." Likewise, the settlement agreement itself provides that the issue of ownership of the Imperial Investment equipment is "reserved for further litigation." It also provides that "[a]ll other equipment and tools not specified herein shall be divided by agreement of the parties with the [district court] being the final decider." Based upon this language, we conclude that appellants did not waive the right to appeal the distribution of the Imperial Investment equipment and other property not specified in the settlement agreement.

Respondents characterize the statement that the district court will make "the final decision" or be the "final decider" as akin to a binding "agreement allowing the mediator to make the final decision." But the fact that the district court makes the final decision in no way indicates that appellants intentionally relinquished the right to appeal. *See Valspar*, 764 N.W.2d at 367. The district court generally makes the final decision in litigation and then that decision is subject to review by appellate courts. *See* Minn. R. Civ. App. P. 103.03 (stating that "final" "judgment[s]," "order[s]," and "decision[s]" are appealable).

Moreover, even if appellants waived their right to appeal the district court's distribution of property, they did not waive their right to enforce the settlement agreement. Appellants claim that the district court violated provisions of the agreement by awarding fixtures on the CJS Ranch Trust property to respondents. Appellants moved to enforce this portion of the settlement agreement after the district court's January 20, 2016 order. *See*

Voicestream, 743 N.W.2d at 271 (stating that a settlement agreement can be "enforced by motion in the original lawsuit"). The district court denied that motion without an evidentiary hearing, determining that the farming equipment in question did not constitute fixtures on the CJS Ranch Trust property.

The Minnesota Supreme Court has stated that a district court should treat a motion to enforce a settlement agreement "as it would a motion for summary judgment." *Id.* at 273. "[District] courts have the inherent power to summarily enforce a settlement agreement as a matter of law when the terms of the agreement are clear and unambiguous." *Id.* at 272 (quotations omitted). But "[i]f material facts are disputed, an evidentiary hearing is required." *Id.*

In summarily denying appellants' motion to enforce the settlement agreement and determining that the disputed farm equipment did not constitute fixtures, the district court essentially granted summary judgment in favor of respondents. On appeal from a grant of summary judgment, this court reviews de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). Construction of an unambiguous settlement agreement is also a question of law that we review de novo. *Horodenski v. Lyndale Green Townhome Ass'n*, 804 N.W.2d 366, 371 (Minn. App. 2011).

Appellants argue that the district court erred in its application of the law because it erroneously defined the word "fixtures." The district court used the following definition

from *Holy Ghost Catholic Church of Two Harbors v. Clinton*, 169 Minn. 253, 259, 211 N.W. 13, 15-16 (1926):

> To constitute a fixture, the thing must be of an accessory character and must be, in some way, in actual or constructive union with the realty and not merely brought upon it. That the thing is removable with but little injury to the building is a factor to be considered, so also that it was installed by a tenant; that it is not removable without being taken to pieces, and is practically worthless when removed, are circumstances to be considered in determining the intent of the parties and the character of the addition.

Based on this definition, the district court determined that the items claimed by appellants are not fixtures because "each of them are designed to be detachable and removable with little to no damage or loss of value to the real property upon which they have originally been installed . . . or to the items themselves."

In challenging the definition of fixtures used by the district court, appellants cite several authorities that actually support the district court's determination. Appellants cite Minn. Stat. § 272.03, subd. 1 (2016), which defines "real property" for tax purposes. The statute provides that "'real property' includes the land itself, rails, ties, and other track materials annexed to the land, and all buildings, structures, and improvements or other fixtures on it." Minn. Stat. § 272.03, subd. 1(a). The statute further explains:

> A building or structure shall include the building or structure itself, together with all improvements or fixtures annexed to the building or structure, which are integrated with and of permanent benefit to the building or structure . . . and which *cannot be removed without substantial damage to itself or to the building or structure.*

Id., subd. 1(b) (emphasis added). Appellants omit the next clause of the statute, which states that "[r]eal property does not include tools, implements, machinery, and equipment attached to or installed in real property for use in the business or production activity conducted thereon, regardless of size, weight or method of attachment." *Id.*, subd. 1(c)(i).

The supreme court recently interpreted Minn. Stat. § 272.03, subd. 1, and other tax statutes and rules as excluding "trade fixture[s]" from the definition of real property. *Comm'r of Revenue v. Dahmes Stainless, Inc.*, 884 N.W.2d 648, 660 (Minn. 2016). Under the trade-fixtures doctrine, "a fixture is considered tangible personal property, rather than real property, when it is used for trade purposes and if removal does not result in material and permanent damage to the real estate." *Id.* at 656. This conclusion is consistent with the district court's determination that the farm equipment at issue here are not fixtures because they are "designed to be detachable and removable" with little to no loss in value to the real property or the equipment itself.

In addition, appellants cite *Black's Law Dictionary*, which defines "fixture" as "[p]ersonal property that is attached to land or a building and that is regarded as an irremovable part of the real property, such as a fireplace built into a home." *Black's Law Dictionary* 713 (9th ed. 2009). This definition is also consistent with the district court's exclusion of removable farm equipment from the definition of fixtures. The district court did not err in defining "fixtures."

Appellants argue that the following farm equipment distributed in the district court's January 20, 2016 order constitute fixtures: silo unloaders; barn cleaner; "[h]ay bale conveyor belt installed inside [a]ppellants' cattle barn"; "[w]ater heaters and coolers,

installed in [a]ppellants' barns"; "[f]eed mill/grinder, installed and electronically hard wired inside one of [a]ppellants' barns"; and a "vacuum pump [and] milk tank."

Respondents submitted affidavits from Jason and other individuals in the industry who frequently work with these items. The affidavits assert that the items can be easily removed from real property without any damage to the real property or the items themselves. They also state that these items are routinely removed and resold. Appellants submitted pictures of the items to show that the items are "fastened," "affixed," and "wired" to the real property. These pictures do not contradict respondents' evidence that the items can be removed from the property without causing damage.

The district court properly defined "fixtures," and appellants have failed to raise any genuine issue of material fact as to whether the items in question meet that definition. Accordingly, the district court did not err by determining that the items distributed to respondents are not fixtures.

Appellants also argue that the following items distributed in the district court's October 25, 2016 order are fixtures to the CJS Ranch Trust property: silos; grain bin; grain dryer; "[b]unk feeder inside [a]ppellants' cattle barn"; hopper bins; "[a]utomatic watering units, installed both inside and outside [a]ppellants' barn"; a "toilet, vanity and set of cabinets installed inside a shop located on [a]ppellants' real estate"; and "cattle chutes and cattle maternity pens built inside of [a]ppellants' barns."[2]

[2] Appellants' brief states that silos, automatic watering units, cattle chutes, and cattle maternity pens were distributed in the January 20, 2016 order. We could not locate these items in that order. There were, however, items matching these descriptions distributed in the October 25, 2016 order.

First, appellants failed to preserve for appeal their claim that a "toilet, vanity and set of cabinets" constituted fixtures on their property. Appellants argued generally at the October 2015 trial that "toilets" and "vanities" constituted fixtures. But the district court found that objection moot because it did not take any action on toilets or vanities in its January 20, 2016 order. In their subsequent submissions prior to the October 25, 2016 order, appellants did not claim the toilet, vanity, or cabinets as fixtures, and the district court did not address the matter. Accordingly, appellants have forfeited that claim. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts do not consider matters not raised before and addressed by the district court).

Second, the remaining items, with the exception of the cattle maternity pens, are listed on Jason's tax returns. Under the settlement agreement, "Jason shall keep all the new farm equipment purchased, as shown on his tax returns." The district court stated in its October 25, 2016 order that it was awarding respondents "the property listed on Jason['s] . . . tax returns." When a contract contains both general and specific provisions on a particular issue, the specific provision may govern over the general. *See* Restatement (Second) of Contracts § 203(c) (1981) ("[S]pecific terms and exact terms are given greater weight than general language[.]"). The items listed on Jason's tax returns are more specific than fixtures on the CJS Ranch Trust property. Notably, the parties' original settlement agreement did not even include the term "fixtures." That was added later in the district court's order. Accordingly, even if these items constitute fixtures, the district court did not err by awarding them to respondents.

Finally, the district court did not rule on whether these items are fixtures. Even if the matter was raised, this court generally does not address matters not ruled on by the district court. *See Thiele*, 425 N.W.2d at 582. Moreover, after the district court issued its October 25, 2016 order, appellants did not move for reconsideration or amended findings or otherwise ask the district court to rule on whether these items are fixtures. We do not review facts not addressed by the district court when the appellant has failed to request a new trial or amended findings on that issue. *First Nat'l Bank of Cold Spring v. Jaeger*, 408 N.W.2d 667, 669-70 (Minn. App. 1987). Because the district court made no findings as to whether the farm equipment in question are fixtures, we are unable to consider appellants' claim.

The district court properly defined "fixtures" and appellants failed to raise a genuine issue of material fact as to whether the items distributed in the district court's January 20, 2016 order meet that definition. Moreover, appellants have failed to preserve for appeal whether the items distributed in the district court's October 25, 2016 order are fixtures. And, even if appellants had preserved that issue for appeal, most of the items were properly distributed to respondents because they are listed on Jason's tax returns. The district court did not err by awarding the farm equipment that appellants claim as fixtures to respondents.

Receivership funds

Appellants next argue that the district court erred by allowing the JBR Farms receiver to pay his own fees and other costs out of the JBR Farms receivership funds. Appellants claim that they were awarded approximately $400,000 in receivership funds

under the settlement agreement and that these payments improperly detract from that award.

As stated above, the district court may summarily enforce a clear and unambiguous settlement agreement. *Voicestream*, 743 N.W.2d at 272. A settlement agreement is ambiguous if it is susceptible to more than one reasonable interpretation. *Dykes*, 781 N.W.2d at 581-82. This court reviews de novo whether a settlement agreement is ambiguous. *Id.* at 582.

The district court appointed a receiver to administer the assets of JBR Farms in June 2014. The appointment order allowed the receiver to "pay and reimburse itself with funds generated through the operation, sale and liquidation of the [r]eceivership [p]roperty."

The district court's order on the parties' October 2015 settlement agreement states, "Bryan and Randy shall receive 100% of the [r]eceiver funds (approximately $400,000.00), less and with the [r]eceiver paying from those funds all taxes for 2014 and 2015 and costs relating to JBR Farms (such as property taxes, income taxes from sales of commodities, etc.)." The order also states that "[t]he [r]eceiver shall stay on until all equipment has been divided." Finally, the order states that all prior orders "that are not inconsistent or in conflict" with the settlement order "remain in full force and effect."

Contrary to appellants' contention, the settlement agreement did not guarantee appellants $400,000. It states that the costs of the receivership will continue to be paid out of the receivership funds. It also orders the receiver to remain on until the remaining property is divided. And because the order appointing the receiver is not inconsistent with

the settlement agreement, that order remains in effect. The appointment order allows the receiver to pay itself fees and other costs from the receivership funds.

The settlement agreement unambiguously allows the receiver to continue to pay itself costs and fees from the receivership funds. Accordingly, the district court did not err by allowing the receiver to continue to pay itself costs and fees from those funds.

Partnership

Appellants next argue that the district court erred by failing to determine whether JBR Farms is a valid partnership. Appellants argued in district court that because JBR Farms was a partnership between Jason, Bryan, and Randy, the farming equipment that remained undistributed after the January 20, 2016 order should be divided equally between the three brothers. Despite previously asking the parties to address whether JBR Farms was a partnership, the district court did not make any findings on this issue in its October 25, 2016 order. The district court stated that "[b]ecause the [c]ourt made no determination that JBR Farms was acting as a partnership under Minnesota law, the [c]ourt did not find it appropriate to divide the property in equal portions, as proposed by [appellants]."

Appellants ask us to find that a valid partnership exists. Whether a partnership exists is a question of fact. *Cyrus v. Cyrus*, 242 Minn. 180, 183, 64 N.W.2d 538, 541 (1954). This court does not make findings of fact. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Moreover, this court generally does not address matters not ruled on by the district court. *See Thiele*, 425 N.W.2d at 582. And, as stated above, appellants did not move for a new trial or amended findings after the district court issued its October 25, 2016 order. The failure to seek amendment of the district court's findings or a new trial precludes

consideration on appeal of facts which the district court did not address. *Jaeger*, 408 N.W.2d at 669-70. Because the district court made no findings as to whether JBR Farms was a partnership and because appellants failed to request amended findings or a new trial on the issue, we cannot address the matter.

Furthermore, appellants waived their partnership claim in the settlement agreement. The settlement agreement and subsequent order provide that "[t]he only claims reserved for further litigation" relate to the Imperial Investment equipment and "Bryan's wage claim against [Jason's] trucking business." "All other claims are forever waived."

Findings of fact

Pursuant to their notice of related appeal (NORA), co-appellants argue that the district court erred by failing to make any findings of fact to support its property distribution in the October 25, 2016 order. The district court made findings of fact in its January 20, 2016 order, but made no additional findings in the October 25, 2016 order. Instead of making findings of fact, the district court stated that it was awarding respondents the property listed on Jason's tax returns, duplicates of Imperial Investment equipment, and other items not mentioned in the other parties' submissions. Co-appellants were awarded items listed in section IV of their submissions and items conceded to them at trial.

"In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." Minn. R. Civ. P. 52.01. However, if the "record is reasonably clear and the facts not seriously disputed, the judgment of the [district] court

can be upheld in the absence of [district] court findings made pursuant to Rule 52.01." *Bettes v. Fuel-Scott*, 415 N.W.2d 409, 411 (Minn. App. 1987) (quotation omitted).

In the January 20, 2016 order, the district court awarded the Imperial Investment equipment to respondents based on documentary evidence and a finding that co-appellants' testimony was not credible. The district court's award of duplicates of the Imperial Investment equipment to respondents in the October 25, 2016 order is supported by those findings. The October 25, 2016 order also awarded to respondents the items listed on Jason's tax returns. Jason's tax returns are in the record, and the settlement agreement supports that distribution. The district court determined that the remainder of the items distributed to respondents were not disputed by the other parties. Accordingly, the district court's October 25, 2016 order may be upheld based on the district court's prior findings of fact, the clear record, and the lack of serious dispute between the parties. *See* Minn. R. Civ. P. 52.01; *Bettes*, 415 N.W.2d at 411.

On appeal, the only issue co-appellants have with the district court's distribution is that the district court failed to award them property conceded to them by respondents. As we discuss below, respondents acknowledge that they conceded this property to co-appellants. Accordingly, there is no need to remand for findings.

Property conceded to co-appellants

Finally, pursuant to their NORA, co-appellants argue that the district court clearly erred by distributing property to respondents that respondents conceded to co-appellants at trial or that was listed in section IV of co-appellants' final submissions. Despite stating in its January 20, 2016 order that it was awarding co-appellants all property conceded to them

by respondents or listed in section IV of co-appellants' final submissions, the district court awarded the following property to respondents: a pressure washer, a Melroe spra-coupe, a 1,000 gallon propane tank, and a 500 gallon LP propane tank. Respondents concede on appeal that these items should have been awarded to co-appellants. The record also supports co-appellants' claims that the above items were conceded to them at trial or listed in section IV of their final submissions.

The district court clearly erred by implicitly finding that these items were not conceded to co-appellants or listed in section IV of co-appellants' final submissions. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (stating that district court's findings of fact are reviewed for clear error). We modify the district court's October 25, 2016 order to award these items to co-appellants.[3]

Affirmed as modified.

[3] Appellants' brief contains a request for "attorney's fees and costs for having to bring this appeal." A party seeking attorney fees on appeal must submit their request by motion, and "[a]ll motions for fees must include sufficient documentation to enable the appellate court to determine the appropriate amount of fees." Minn. R. Civ. App. P. 139.06, subd. 1. Because appellants have not filed a motion or documentation to allow us to determine the appropriate amount of fees, we do not address the request for fees.