STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1847

Robert F. Goerdt, et al.,
Respondents,

vs.

Lucille Goerdt, et al.,
Appellants.

Filed August 5, 2019
Affirmed
Schellhas, Judge

Otter Tail County District Court
File No. 56-CV-15-2107

Dennis W. Hagstrom, Law Office of Dennis W. Hagstrom, Fergus Falls, Minnesota (for respondents)

Nathan L. Seeger, Fergus Falls, Minnesota (for appellants)

Considered and decided by Jesson, Presiding Judge; Schellhas, Judge; and Smith, Tracy M., Judge.

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

SCHELLHAS, Judge

Appellants challenge a district court's enforcement of the terms of a settlement agreement involving their adverse claims to real estate. We affirm.

FACTS

Appellant Lucille Goerdt and her husband, Lorain Goerdt, owned a 317-acre farm in Section 4, Township 130, Range 44, in Grant County.[1] On December 29, 1993, Lucille and Lorain Goerdt created the Goerdt Revocable Living Trust (the trust) and, in 2009, named their son, respondent/cross-appellant Robert Goerdt, as trustee, and placed their Section 4 land into the trust. After Lorain died in March 2013, Lucille contacted an attorney to assist her in selling the farm and to address her belief that Robert was engaged in "self-dealing and pocketing funds of the trust."[2] Lucille then asked Robert to provide an accounting of the trust and to step down as trustee. Robert refused, and Lucille sued him in November 2013. The parties settled their dispute through a settlement agreement entered in open court in December 2014.

Under the terms of the settlement agreement, Robert agreed to resign as trustee of the Goerdt Revocable Living Trust and to forfeit any inheritance from the trust and Lucille's estate, and the trust agreed to transfer to Robert real estate located in Section 3, Township 130, Range 44, in Grant County,[3] and would give him an option to purchase the Section 4 land.[4] The district court accepted the settlement agreement as valid and binding.

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[1] Lucille Goerdt died on March 18, 2019. Appellants Kathleen Stoeser and Dennis Goerdt are two of Lucille's children; Jennifer Berg and Melissa Lu are two of her granddaughters (collectively referred to as appellants), and are successors-in-interest to Lucille's title to the Section 4 land and this appeal.

[2] We use the first names of individuals who share the same surname.

[3] In the settlement agreement, the Section 3 land is referred to as "the contract for deed land."

[4] The Section 3 land was the subject of another appeal, *Goerdt v. Folsom*, No. A17-1751 (Minn. App. July 2, 2018), *review denied* (Minn. Sept. 26, 2018), in which this court

Paragraph 20 of the settlement agreement provides that "[t]his agreement shall become effective upon [Robert] receiving quit claim deeds to the contract for deed property from [appellants]." In accordance with the settlement agreement, Robert resigned as trustee, the trust delivered a quit claim deed to the Section 3 land to Robert, and Robert recorded his option to purchase the Section 4 land. On January 14, 2015, the court dismissed Lucille's suit with prejudice.

On January 26, 2015, the new trustee of Lucille's trust conveyed the Section 4 land from the trust to Lucille. On January 28, a neighboring farmer, Brian Lacey, offered to purchase the Section 4 land. On February 6, Lucille's attorney sent Robert's attorney written notice of Lucille's intent to convey the Section 4 land to Lacey, stating that the notice was "provided to trigger the ninety (90) days in which [Robert] must decide whether he wishe[d] to exercise his option." On April 30, Robert's attorney responded to the February 6 letter, stating that because the previously delivered quit claim deed to the Section 3 land was unrecordable, the settlement agreement was "not yet effective," and "the notice contemplated" in the "February 6, 2015 letter was premature, and [could not] be relied upon to trigger the applicable ninety (90) day notice period, in light of the fact that the settlement agreement [was] not yet effective." Robert's attorney also opined that Robert's resignation as trustee was not effective because the quit claim deed to the Section 3 land was unrecordable, and that the trust's conveyance of the Section 4 land to Lucille was therefore ineffective.

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concluded that Robert and his wife, Debra Goerdt, were the fee-simple owners of the Section 3 land.

In July 2015, Robert and respondent/cross-appellant Debra (hereafter "the Goerdts") sued appellants, reiterating, in relevant part, the claims made by Robert's attorney in his response to the February 6 letter from Lucille's attorney. In December, the Goerdts' attorney sent appellants' attorney a copy of an amended complaint, nominated an appraiser for the Section 4 land, and offered to settle the dispute. In January 2016, appellants answered the amended complaint and counterclaimed against the Goerdts. Appellants twice moved for summary judgment, and the district court denied the motions in August and December 2017.

Following a four-day court trial, the district court issued findings of fact, conclusions of law, order, and judgment in May 2018. Following appellants' post trial motions for amended findings, conclusions or law, or a new trial, the court made clerical corrections and added a finding of fact but otherwise denied appellants' motions.

This appeal follows.

D E C I S I O N

Appellants challenge the May 2018 judgment, the order denying their posttrial motions, and the September 2018 amended judgment. Appellate courts "must apply the facts as found by the district court unless those factual findings are clearly erroneous." *Melillo v. Heitland*, 880 N.W.2d 862, 864 (Minn. 2016) (quotation omitted). "To conclude that findings of fact are clearly erroneous, we must be left with the definite and firm conviction that a mistake has been made." *LaPoint v. Family Orthodontics, P.A.*, 892 N.W.2d 506, 515 (Minn. 2017) (quotation omitted). A reviewing court gives "due regard" to "the opportunity of the [district] court to judge the credibility of the witnesses." Minn.

R. Civ. P. 52.01. "We review a district court's application of the law de novo." *Harlow v. Dep't of Human Servs.*, 883 N.W.2d 561, 568 (Minn. 2016).

I. Appellants' jurisdictional argument

As an initial matter, appellants argue that the district court "lacked subject matter jurisdiction to grant relief on either the Complaint or Amended Complaint," claiming that the Goerdts never served them with any of his complaints. "Subject-matter jurisdiction refers to a court's authority to hear and determine a particular class of actions and the particular questions presented to the court for its decision." *Zweber v. Credit River Twp.*, 882 N.W.2d 605, 608 (Minn. 2016) (quotations omitted). Because appellants do not challenge the district court's authority to hear the case, we construe their challenge as one to the court's personal jurisdiction over them. *See* Minn. R. Civ. P. 3.01-.02 (requiring service of complaint and summons against each defendant in order to commence a civil action). Indeed, appellants asserted lack of service of process in their answer and counterclaim.

Whether personal jurisdiction exists is a question of law that appellate courts review de novo. *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). "[O]nce a defendant affirmatively invokes the court's power to determine the merits of all or part of a claim, the defendant cannot then deny the court's jurisdiction over him." *Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 869 (Minn. 2000); *see Slayton Gun Club v. Town of Shetek*, 176 N.W.2d 544, 548 (Minn. 1970) (citation omitted) ("A party who takes or consents to any step in a proceeding which assumes that jurisdiction exists or continues has made a general appearance which subjects him to the jurisdiction of the court."). Here, appellants

did not move the district court to dismiss for lack of personal jurisdiction but twice moved for summary judgment. We conclude that appellants waived any challenge to personal jurisdiction.

II. Application of the merger doctrine

Appellants argue that the district court erred by not applying the merger doctrine to conclude that the "terms of the Settlement Agreement merged into the subsequent Option to Purchase Real Estate," and "that the Option to Purchase Real Estate was effective when Lucille gave to Robert on February 6, 2015, her notice of intent to sell; thus triggering Robert's right to exercise his option to purchase." Here, in their motion for amended findings, appellants argued that the district court should have applied the merger doctrine in order to find in their favor regarding whether Robert effectively triggered his option. The court implicitly denied this argument when it did not apply the merger doctrine in its order denying appellants' request for amended findings, conclusions of law, or a new trial.

The supreme court established in *In re Brown's Estate* that the merger rule

> applies to all stipulations and agreements contained in the executory contract by which the performance of specified acts are expressly made conditions precedent to the right to enforce the same. If any thereof be left unperformed, and a deed in performance of the contract be executed and accepted, the presumption, in the absence of fraud or mistake, is that the omitted acts or things so required were waived or abandoned.

148 N.W. 121, 122 (Minn. 1914). Here, appellants cite to no authority in support of their argument that the terms of the settlement agreement merged into the option to purchase.

We conclude that the district court did not err in rejecting appellants' merger-doctrine argument.

III. Waiver of challenge to a condition precedent in the settlement agreement

Appellants argue that Robert waived his right to challenge the effectiveness of the settlement agreement. The district court found that that Robert did not waive his right to challenge the effectiveness of the settlement agreement. "[W]aiver is a voluntary and intentional relinquishment or abandonment of a known right." *Montgomery Ward & Co. v. County of Hennepin*, 450 N.W.2d 299, 304 (Minn. 1990). "Waiver is generally a question of fact, and it is rarely to be inferred as a matter of law." *Valspar Refinish Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 367 (Minn. 2009) (quotation omitted).

"An agreement entered into as compromise and settlement of a dispute is contractual in nature." *Voicestream Minneapolis, Inc. v. RPC Props., Inc.*, 743 N.W.2d 267, 271 (Minn. 2008). "[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). Contract interpretation is a question of law that [appellate courts] review de novo." *Valspar*, 764 N.W.2d at 364 (quotation omitted). "The primary goal of contract interpretation is to ascertain and enforce the intent of the parties," and "when a contractual provision is clear and unambiguous, courts should not rewrite, modify, or limit its effect by a strained construction." *Id*. at 364–65. In *Valspar*, the supreme court concluded that a company did not waive a contract requirement that it receive written notices of paint defects brought by customers where the company worked with customers to try to rectify the defects. *Id*. at 368. The court found significant the fact that the

company's representatives had not stated any intention to waive the written-notice requirement. *Id*.

Our review of appellants' argument requires this court to analyze the parties' settlement agreement regarding the Section 4 land. As the district court found, Robert's April 30, 2015 letter specifically states that he was providing notice of his intent to exercise his option. Similar to *Valspar*, Robert made no statement that would show his clear intent to waive the settlement agreement's condition precedent of receiving title for the Section 3 land; indeed his April 30, 2015 letter states his explicit intent not to waive that condition. *See Carlson v. Doran*, 90 N.W.2d 323, 324 (Minn. 1958) (stating that waiver is the "expression of an intention not to insist upon what the law affords; it is consensual in its nature; the intention may be inferred from conduct, and the knowledge may be actual or constructive, but both knowledge and intent are essential elements"). And as the district court found, the settlement agreement specifically states that it "shall become effective upon [Robert] receiving the quit claim deed for the Section 3 land." We therefore conclude that the court did not err in concluding that Robert did not waive the condition precedent that he receive title to the Section 3 land, and that the settlement agreement was not effective until this condition was met. *See Voicestream*, 743 N.W.2d at 273 (stating that "encouraging (and enforcing) the settlement of claims" is an "important public policy").

IV. Effectiveness and timely exercise of option to purchase Section 4 land

Appellants argue that Robert's option is unenforceable. Based on the district court's May 3 and September 12, 2018 orders, our consideration of this issue is not necessary because the court's disposition returned the parties to the positions they held prior to

Robert's exercise of his option. In the interests of future judicial economy, we nevertheless address the issue. *See Ryan Contracting Co. v. O'Neill & Murphy, LLP*, 868 N.W.2d 473, 481 (Minn. App. 2015) (addressing issue in case "in the interests of judicial economy because it is likely to arise on remand"), *aff'd as modified*, 883 N.W.2d 236 (Minn. 2016); Minn. R. Civ. App. P. 103.04 ("The appellate courts may . . . take any other action as the interest of justice may require.").

"An option is merely an agreement to hold an offer to sell property open for a specified time." *Morrison v. Johnson*, 181 N.W. 945, 946 (Minn. 1921). "An option is a unilateral undertaking to keep an offer open for a period of time." *Abrahamson v. Abrahamson*, 613 N.W.2d 418, 423 (Minn. App. 2000). "Once a contract option has been exercised in accordance with its terms, it changes into a contract of purchase and sale." *In re City of Shakopee*, 295 N.W.2d 495, 497 (Minn. 1980).

Robert's recorded option in pertinent part reads:

> Robert Goerdt, as Trustee of the Goerdt Family Irrevocable Living Trust, called "Grantor" grants to Robert Goerdt (and his heirs and assigns), "Grantee," the sole and exclusive option to purchase [the Section 4 land], described, pursuant to the terms of the settlements agreement, ... The terms of said option are as follows:
>
> 1. The purchase price for this option to purchase shall be 75% of the fair market value of the property as determined by an appraiser agreeable to both the owner and Grantee. . . .
>
> 2. Grantee has the option to purchase this property 1) on or after January 1, 2017, 2) if Lucille Goerdt dies, or 3) if the current owner thereof wishes to convey to anyone other than Lucille Goerdt.
>
> 3. If the owner wishes to convey [the Section 4 land] to anyone other than Lucille Goerdt, the owner shall notify Grantee in writing of said intention and Grantee shall then have

> 90 days in which to notify owner in writing of his desire to exercise the option.
>
> 4. If Grantee wishes to exercise the option in the other two circumstances listed in paragraph one (1), he shall notify the current owner in writing of said intention.
>
> 5. In all three circumstances listed above, the owner and Grantee shall then enter into a purchase agreement whereby owner shall agree to convey to Grantee free and clear of any encumbrances after obtaining a fair market value determination in the manner described in paragraph one (1), and Grantee shall have up to 120 days from the date the purchase agreement is executed to close the transaction.

The district court implicitly found that the option was enforceable when it concluded that Robert "did exercise a timely and proper option to purchase."

Appellants argue that Robert's option is unenforceable because it lacks consideration. "If [an] agreement is made for a valuable consideration it becomes a binding contract and the offer cannot be withdrawn; if made without consideration it does not become a binding contract until accepted and the offer may be withdrawn at any time before it has been accepted." *Morrison*, 181 N.W. at 946. Whether sufficient consideration was given is a question of law. *Concordia College Corp. v. Salvation Army*, 470 N.W.2d 542, 546 (Minn. App. 1991), *review denied* (Minn. Aug. 2, 1991). Here, we conclude that Robert provided consideration for the option by resigning as trustee, dismissing his pending claims, and forgoing an interest in the trust and Lucille's estate. *See Charles v. Hill*, 260 N.W.2d 571, 575 (Minn. 1977) (holding son's forbearance of claim against estate, when bargained for, was adequate consideration for option contract).

Appellants also argue that Robert's option is unenforceable because it did not contain essential terms, mainly the time frame with which the parties must form a purchase

agreement. We disagree. The option here contained the essential terms: a description of property (by reference to the settlement agreement which contained a legal description of the Section 4 land), the cost (fair market value based on a formula established in the option), and a time limit for closing. The lack of a time period during which Robert and Lucille must agree on a purchase price does not render the option unenforceable, as Minnesota law provides that when no deadline is provided to perform under an option, performance must be done within a "reasonable time." *See Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 785 (Minn. 2004) ("We acknowledge that upon receiving notice, a lessee may have to clarify or investigate uncertainties and ambiguities of essential terms, but we also conclude that such an inquiry must be done within a reasonable time and that both the lessee, in making inquiry, and the lessor, in responding to the inquiry, must act timely, reasonably and in good faith."). And the cases that appellants cite are inapplicable, as *Malevich v. Hakola*, 278 N.W.2d 541, 543 (Minn. 1979), regards an option contract used as a "memorandum of a contract of sale of real estate," which is not present here as the option makes clear that the parties must separately negotiate a purchase agreement; and *Romain v. Pebble Creek Partners*, 310 N.W.2d 118, 119 (Minn. 1981), addressed the applicability of the notice-cancellation statute to a purchase agreement and did not involve an option contract. We therefore conclude that Robert's option was enforceable.

Appellants also argue that Robert failed to timely exercise his option because the parties did not form a purchase agreement in the requisite 90-day period. "An option remains a unilateral undertaking and conveys no interest in its subject matter until the optionee effectively exercises it," and if "the time in which an option is to be exercised

expires before the optionee meets its terms and conditions, the option lapses." *Abrahamson*, 613 N.W.2d at 423. The district court found that Robert timely exercised his option by sending Lucille his notice of intent to buy the Section 4 land in April 2015.

Analyzing the plain language of the option, we conclude that Robert timely exercised the option by notifying Lucille of his intent to purchase the Section 4 land within 90 days of receiving Lucille's notice of her intent to sell. Appellants' argument assumes a reading of the option that requires a purchase agreement must also be executed within 90 days of Lucille's initial notification that she intended to sell the Section 4 land. But this reading ignores the separation in the language of the option of the requirements to provide notice and to execute a purchase agreement; and the option contains no language regarding a time limit for executing a purchase agreement.

Appellants cite to *Hansen v. Phillips Beverage Co.*, which involved a letter of intent to sell a business that specifically stated that it "shall not be a binding legal agreement." 487 N.W.2d 925, 926 (Minn. App. 1992). There, this court concluded that no contract to sell the business had been formed because the parties "clearly indicated an intent not to be bound" by stating such in the letter of intent. *Id.* at 927. Here, unlike in *Phillips*, Robert's option contains no such explicit statement of the parties' intent not to be bound by the option or eventual purchase agreement. Lucille notified Robert of her intent to sell the Section 4 land in February 2015; Robert replied by letter on April 30, 2015, within the 90-day deadline, informing Lucille of his exercise of the option; he then informed Lucille of his appraiser selection, and Lucille never responded. We conclude therefore that the district court did not err in concluding that Robert timely exercised his option.

V. District court's grant of relief based on the original complaint

In his cross-appeal, Robert argues that the district court erred by granting relief based on the original complaint and not the first or second amended complaint. In its May 4 and September 17, 2018 orders, the district court found:

> Although an unsigned Amended Complaint was filed with the Court on August 22, 2017 and a signed Amended Complaint on October 18, 2017, neither of those Complaints were served on the other party and therefore the original complaint will be considered by this Court. It should also be noted that both Amended Complaints seem to be drafted and/or signed by Attorney Kristian Svingen, who has not been the attorney for Plaintiffs since January 11, 2016.

The record shows that Robert filed the original complaint on July 17, 2015, with no affidavit of service. Appellants filed an answer to the original complaint and counterclaim, dated January 4, 2016, and an affidavit of service on March 24, and Robert filed an answer and an affidavit of service on February 8. And on August 22 and October 18, 2017, Robert filed the first and second amended complaints with no affidavits of service.

Based on this record, the district court properly concluded that neither of Robert's amended complaints was properly served. And while the court proceeded on the basis of the original complaint, both parties were able to fully present their claims and defenses at trial, and it is therefore not apparent what prejudice Robert suffered.[5] *See Folk v. Home Mut. Ins. Co.*, 336 N.W.2d 265, 267 (Minn. 1983) ("Consent [to litigate] is commonly implied either where a party fails to object to evidence inadmissible with respect to issues

[5] The district did not rule on appellants' counterclaims, and appellants claim no error regarding their counterclaims.

raised by the pleading or where he puts in his own evidence relating to nonpleaded issues."). "Although error may exist, unless the error is prejudicial, no grounds exist for reversal." *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987); *see also* Minn. R. Civ. P. 61 (requiring harmless error to be ignored). Even assuming that the district court erred by proceeding on the basis of the original complaint, we discern no prejudice suffered by either party and therefore reject this argument.

Affirmed.