STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0800

Skyler Woodard,
Appellant,

vs.

Nathan F. Krumrie, et al.,
Respondents.

Filed March 2, 2020
Affirmed
Smith, Tracy M., Judge

Winona County District Court
File No. 85-CV-18-881

Daniel M. Eaton, Christensen Law Office PLLC, Minneapolis, Minnesota; and

Alan I. Silver, Bassford Remele, Minneapolis, Minnesota (for appellant)

Brian N. Niemczyk, Joel A. Hilgendorf, Hellmuth & Johnson, Edina, Minnesota (for respondents)

Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and Bryan, Judge.

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

SMITH, TRACY M., Judge

Respondents Nathan F. and Marion C. Krumrie entered into a contract for deed to sell their family farm to their then-son-in-law, Jeffrey Woodard, the father of appellant Skyler Woodard. The contract for deed contained an anti-transfer provision. Shortly before

his death approximately 24 years later, Jeffrey[1] executed a transfer-on-death deed (TODD) to transfer his interest in the contract for deed to Skyler. After Jeffrey died, and upon learning of the TODD, the Krumries served notice of cancellation of the contract for deed. Skyler brought suit, seeking to enjoin the cancellation. The parties cross-moved for summary judgment, and the district court granted it in favor of the Krumries and denied injunctive relief.

On appeal, Skyler argues that the district court erred because (1) the TODD did not violate the anti-transfer clause; (2) even if the TODD violated the clause, it would not be a material breach of the contract; (3) respondents failed to follow Minnesota's contract-termination statute, Minn. Stat. § 559.21 (2018); (4) the anti-transfer clause is an unreasonable restraint on alienation; and (5) equitable considerations weighing against cancellation should have been considered. We affirm.

FACTS

In 1994, the Krumries sold their 200-acre farm in Winona County to Lisa and Jeffrey Woodard—the Krumries' daughter and son-in-law—through a contract for deed. The contract stipulates that the Krumries would deliver title upon completion of the contract. The total purchase price was $115,000, to be paid in monthly payments of $450, and eventually $600, with three percent and six percent interest, respectively. The contract states that the purchasers can pay early on the contract, but "shall not prepay more than 20% of the unpaid principal balance in 1 calendar year." Finally, the contract states, "The

[1] First names are used to avoid confusion.

purchasers shall not sell, assign or otherwise transfer their interest without written consent of the sellers." This anti-transfer clause is one of two clauses that were added to the otherwise form contract.

Skyler is Jeffrey and Lisa's son. Jeffrey and Lisa divorced in 1999. Jeffrey received the property interest through the dissolution proceedings and continued to make the contract payments. On October 25, 2017, Jeffrey executed a TODD seeking to transfer all of his interest in the property to Skyler upon his death. Jeffrey died on January 29, 2018.

Skyler took possession of the property shortly after his father's death. On February 16, 2018, Skyler's attorney wrote a letter to the Krumries informing them of Jeffrey's death and Skyler's interest in the contract for deed through the TODD. The Krumries first learned of the TODD through this letter. In response, on April 23, 2018, they served Skyler with a notice of cancellation of the contract for deed, citing breach of the contract's anti-transfer clause.

Skyler filed a complaint seeking a temporary and permanent injunction against termination of the contract. The parties cross-moved for summary judgment. The district court denied Skyler's motion and granted the Krumries' motion, ruling that the contract for deed was terminated.

Skyler appeals.

D E C I S I O N

Appellate courts review a district court's summary judgment decision de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). "In doing so, [appellate courts] determine whether the district court properly applied the

law and whether there are genuine issues of material fact that preclude summary judgment." *Id.* Skyler challenges the district court's application of the law, advancing five arguments. We analyze each in turn.

I. Jeffrey's TODD breached the anti-transfer provision of the contract.

Skyler argues that the TODD did not breach the contract for deed. Contract interpretation is a question of law that appellate courts review de novo. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). Appellate courts interpret contracts to enforce the intent of the parties. *Id.* "[W]hen a contractual provision is clear and unambiguous, courts should not rewrite, modify, or limit its effect by a strained construction." *Id.*

The anti-transfer clause in the contract for deed states, "The purchasers shall not sell, assign or otherwise transfer their interest without written consent of the sellers." The clear meaning of the clause is to give the Krumries the ability to give or deny consent to any transfer. Here, Jeffrey tried to assign his interest to Skyler through a TODD. A TODD is defined as "[a] deed that conveys or assigns an interest in real property, to a grantee beneficiary and . . . transfers the interest to the grantee beneficiary upon the death of the grantor owner . . . ." Minn. Stat. § 507.071, subd. 2 (2018). A TODD is a transfer of a property interest, and the parties do not dispute that Jeffrey executed the TODD without the Krumries' consent.

Skyler argues that the TODD did not breach the anti-transfer clause of the purchase agreement because the TODD was only a tool to avoid probate. If not for the TODD, Skyler argues, he would have received the vendee's interest through his father's will. Skyler

contends that receiving the property through his father's will would not have violated the anti-transfer clause. But Skyler provides no legal authority for that proposition, and appellate courts decline to reach issues that are inadequately briefed. *Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997). Moreover, Skyler has not shown why the district court should have ignored the TODD—which plainly is a transfer—and let the property interest pass as if it had been devised to Skyler in Jeffrey's will, or even whether the district court had the authority to do so.

A TODD is a transfer of interest in the property, and Skyler has not shown why the TODD should be an exception to the plain language of the contract. Jeffrey's TODD therefore was a breach of the contract for deed.

II. The breach of the anti-transfer clause was a material breach of contract.

Skyler next argues that, if his father's TODD did breach the contract, it was not a material breach because (1) material breaches must affect the financing and (2) the property still remains in the family.

A vendor in a contract for deed may cancel the contract after any material breach. *See* Minn. Stat. § 559.21, subd. 2a (2018); *Sitek v. Striker*, 764 N.W.2d 585, 593 (Minn. App. 2009), *review denied* (Minn. July 22, 2009). "A material breach is '[a] breach of contract that is significant enough to permit the aggrieved party to elect to treat the breach as total (rather than partial), thus excusing that party from further performance and affording it the right to sue for damages.'" *BOB Acres, LLC v. Schumacher Farms, LLC*, 797 N.W.2d 723, 728 (Minn. App. 2011) (quoting *Black's Law Dictionary* 214 (9th ed. 2009)). In other words, the breach must go to the "root or essence of the contract." *Id.* A

breach of an express condition in a contract is not necessarily material. *Id.* at 728-29. Whether a breach is material is generally a question of fact, *Sitek*, 764 N.W.2d at 593, but, because the parties agree that the facts are undisputed, the issue here is whether the undisputed facts establish a material breach.

The first question is what evidence can be examined when determining what terms are material to a contract. Skyler argues that the parol evidence rule limits this court to the four corners of the contract for deed. "The parol evidence rule prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing." *Maday v. Grathwohl*, 805 N.W.2d 285, 287 (Minn. App. 2011) (quotation omitted). But Skyler has not shown that the parol evidence rule applies when discerning what terms in a contract are material, and caselaw suggests that parol evidence may be used. *See Boatwright Constr., Inc. v. Kemrich Knolls*, 238 N.W.2d 606, 607 (Minn. 1976) (concluding that the breach was not material after "carefully examin[ing] the evidence and exhibits").

It is undisputed that the Krumries entered the contract for deed with their daughter and her husband. The parties used a contract-for-deed form and filled in their specific information and terms with larger point type. The last section of the form is labelled "additional terms," with blank space underneath. The parties added these two terms: (1) "The purchasers shall not sell, assign or otherwise transfer their interest without written consent of the sellers," and (2) "Purchasers shall not make improvements or structural changes costing in excess of $5,000.00 without the written consent of the sellers which

shall not be unreasonably withheld." Both terms gave the Krumries control over the property. It is clear under the contract that the Krumries did not enter into the agreement for strictly financial reasons and that the state and ownership of the property was important to them. The anti-transfer clause protects those interests and is therefore material.

Skyler argues that a breach of a contract for deed is material only if it relates to a financial interest and that, in any event, the Krumries' interest in keeping the farm in the family was not frustrated since he is their grandson. First, Skyler is mistaken that all material breaches of contracts for deed are financial. The Krumries correctly note that Minnesota courts have allowed cancellation of contracts for deed when a party breaches a consent clause. *See Bank Midwest, Minn., Iowa, N.A. v. Lipetzky*, 674 N.W.2d 176, 179 (Minn. 2004) (holding that the grant of a mortgage without the consent of the vendor violated an anti-transfer clause in a contract for deed, in an action seeking injunctive relief barring the cancellation of a contract for deed and declaratory judgment that the mortgage was invalid); *see also Karim v. Werner*, 333 N.W.2d 877, 879 (Minn. 1983) (affirming the district court's conclusion that appellants breached the contract for deed by violating the due-on-sale clause). While many contracts for deed may have financial interests at their core, the Krumries had other motives for entering into the agreement. The anti-transfer clause is material to those interests.

Second, it does not matter that Skyler is family. The contracting parties did not agree that the property must stay in the family; they agreed that the Krumries must consent to any transfer of the property. Consent cannot be assumed based on familial relationship.

Jeffrey's execution of the TODD was a material breach of the contract for deed because the anti-transfer clause was a core term of the agreement.

III. The Krumries complied with the requirements of the contract-termination statute.

Next, Skyler argues that the Krumries did not properly follow Minnesota's contract-termination statute, Minn. Stat. § 559.21. Under that statute, if a vendee breaches a contract for deed, the vendor may cancel the contract after giving the following notice and opportunity to cure:

> If a default occurs in the conditions of a contract for the conveyance of real estate . . . that gives the [vendor] a right to terminate it, the [vendor] may terminate the contract by serving upon the [vendee] . . . a notice specifying the conditions in which default has been made. The notice must state that the contract will terminate 60 days . . . after the service of the notice, unless prior to the termination date the [vendee]:
>
> (1) complies with the conditions in default;
>
> (2) makes all payments due and owing to the [vendor] under the contract through the date that payment is made;
>
> (3) pays the costs of service of the notice . . .;
>
> (4) . . . pays two percent of any amount in default at the time of service . . .; and
>
> (5) . . . pays an amount to apply on attorney[] fees actually expended or incurred . . .

Minn. Stat. § 559.21, subd. 2a. Skyler argues that the Krumries failed to follow the contract-termination statute because the Krumries (1) did not provide an opportunity to cure, (2) had other, alternative remedies to cancellation, and (3) failed to follow the Farmer-Lender Mediation Act (FLMA), Minn. Stat. §§ 583.20-.32 (2018). We address each argument in turn.

A. Opportunity to cure

Skyler first argues that the notice of termination was invalid because the Krumries did not provide him with an opportunity to cure.

We agree with the district court that an opportunity to cure is not necessary in order to cancel a contract based on an incurable breach. Skyler argues that, "because there still is no cure for death, and because [he]—and [his father] when he was alive—were otherwise performing on the contract for deed, the district court should have concluded that the transfer could not be a basis for statutory cancellation." Skyler supports this argument by citing cases that state that a party is excused from performance on a contract when they die. But excusing a deceased person from their contractual responsibilities is different from letting their beneficiaries receive their property with no previous contractual restrictions. Further, Skyler does not cite any caselaw that suggests an incurable breach cannot justify terminating a contract.

Skyler, however, contends that the breach is curable because a representative of his father's estate could invalidate the TODD and let the vendee's interest pass to Skyler through his father's will. He also argues that the Krumries have not shown any damages. Both arguments lack merit. Only the grantor owner can revoke a TODD, Minn. Stat. § 507.071, subd. 10 (2018), so, because the grantor has died, the TODD cannot be undone. And Skyler's argument that the Krumries have not shown any actual damages is based on his unsubstantiated belief that the vendee's interest would have gone to him regardless. Further, Skyler has not shown that actual damages are required for termination under the statute.

Finally, Skyler asks us to ignore the breach because, based on the district court's interpretation of the law, it is impossible for a terminally ill vendee to protect their interest in a contract for deed with an anti-transfer clause without the consent of the vendor. But our role is only to interpret the plain meaning of this unambiguous contract. *See Travertine Corp.*, 683 N.W.2d at 271. And the contract required consent for transfer.

B. Alternative remedies

Skyler next argues that ruling in his favor would not leave the Krumries without a remedy. He notes that, if he breaches the contract for deed, they can send a notice of termination or sue Skyler for specific performance. But these arguments are irrelevant as the Krumries have properly pursued their bargained-for remedy in the contract.

C. Farmer-Lender Mediation Act

Skyler also argues that the Krumries did not follow the requirements set forth in the FLMA and thus violated Minn. Stat. § 559.21. *See* Minn. Stat. § 559.209 (2018) (requiring compliance with the FLMA before beginning termination of a contract for deed under Minn. Stat. § 559.21). The Krumries argue that Skyler is raising this argument for the first time on appeal and that we therefore should not consider it. Appellate courts generally will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Skyler lists the FLMA issue in the complaint and mentions agricultural production in his affidavit. But Skyler's attorney did not mention the FLMA in either his summary judgment briefing or oral argument, so the district court did not have the opportunity to evaluate the issue in its order. Skyler has forfeited this argument on appeal.

IV. The anti-transfer clause is not an unreasonable restraint on alienation.

Skyler next argues that the anti-transfer clause is an unreasonable restraint on alienation because it lacks "due-on-sale" language and does not protect the Krumries' financial interests. This argument is based on two cases that Skyler contends set the precedent for all anti-transfer provisions in contracts for deed: *Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Ass'n of Minneapolis*, 308 N.W.2d 471 (Minn. 1981), and *Karim v. Werner*, 333 N.W.2d 877 (Minn. 1983). But both cases analyze due-on-sale clauses that are materially different from the Krumries' anti-transfer clause.

Skyler interprets *Holiday Acres* to hold that consent clauses are an unreasonable restraint on alienation unless they contain a due-on-sale clause that protects the lender's security interest. *Holiday Acres* addressed whether mortgages could have due-on-sale clauses that benefit the lender through requiring the next purchaser to start a new mortgage with frontloaded interest rather than assume the seller's amortization schedule or possibly advantageous interest rate. *Holiday Acres*, 308 N.W.2d at 481. Not only are due-on-sale clauses common in mortgages today, making *Holiday Acres* of limited value here, but *Holiday Acres* upheld a due-on-sale clause as *not* an unreasonable restraint on alienation. *Id.* at 485. *Holiday Acres* did not *require* a due-on-sale clause to avoid a restraint on alienation. And the Minnesota Supreme Court has held that anti-transfer clauses are valid in contracts for deed and can terminate the rights of third parties even when the contract has a prepayment limit and no due-on-sale provision. *See Lipetzky*, 674 N.W.2d at 178, 179 n.5.

Skyler cites *Karim* for the proposition that a consent clause must contain a due-on-sale provision. In *Karim*, the supreme court held that the due-on-sale clause in a contract for deed was breached when the vendee sold their interest to a third party in a second contract for deed without paying the remaining balance from the original contract for deed. *Karim*, 333 N.W.2d at 879. But the anti-transfer clause in *Karim* stated that "[a]ny transfer in violation of this provision shall be cause for immediate acceleration of the then remaining balance." *Id.* at 878. The Krumries' anti-transfer clause does not contain this language.

Skyler has not shown how the anti-transfer clause here is an unlawful restraint on alienation.

V. The district court correctly did not consider equity because a valid contract controls.

Finally, Skyler argues that the district court should have considered the equities and found in his favor. "[E]quitable relief cannot be granted where the rights of the parties are governed by a valid contract." *U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981). Skyler cites *D.J. Enters. of Garrison, Inc. v. Blue Viking, Inc.*, 352 N.W.2d 120 (Minn. App. 1984), *review denied* (Minn. July 31, 1984), in arguing that courts can consider equities when deciding whether cancellation of a contract for deed should proceed. But *D.J. Enterprises* is distinguishable. In *D.J. Enterprises*, the vendee fell behind on payments and the vendor served the vendee with a notice of cancellation. 352 N.W.2d at 120-21. The cancellation notice contained the 90-day deadline required by statute for obtaining injunctive relief. *Id.* at 121. But, while the court heard the vendee's motion for

an injunction within that period, it did not grant the injunction until after the 90-day deadline. *Id.* This court balanced equities in concluding that the district court had jurisdiction to issue the injunction beyond the 90-day deadline. *Id.* at 122. We said, "We perceive in the narrow circumstances presented here the need to exercise our equity jurisdiction so as not to give the cancellation statute unwarranted effect." *Id.* The facts here do not fall within the narrow circumstances of *D.J. Enterprises.* Skyler has failed to show why the district court erred by following the written agreement of the parties rather than weighing the equities.

In sum, the district court did not err by granting summary judgment for the Krumries.

Affirmed.