STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1662

CHS Capital LLC, f/k/a Cofina Financial LLC,
Appellant,

vs.

Lena Farms Prtshp LLC, et al.,
Respondents.

Filed July 6, 2020
Affirmed in part, reversed in part, and remanded
Hooten, Judge

Goodhue County District Court
File No. 25-CV-15-2142

Jon R. Brakke, Drew J. Hushka, Vogel Law Firm, Fargo, North Dakota (for appellant)

Robert G. Benner, John T. Giesen, Dunlap & Seeger, P.A., Rochester, Minnesota (for respondents)

Considered and decided by Hooten, Presiding Judge; Jesson, Judge; and Klaphake, Judge.*

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

HOOTEN, Judge

This appeal concerns the security interest of appellant-lender CHS Capital LLC (CHS) in crops grown on agricultural land in which respondent-debtors—Lena Farms

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Partnership LLC, Lena Farms Inc., Gen X Farms LLC d/b/a Gen X Farms, MNTB Assets LLC, Forest Mills Land LLC, Lena Land Lease Co. LLC, Central Management, Brian Haugen, Shannon Haugen, Stacy Haugen, Devon Haugen, and Monica Poncelet—had an interest. CHS argues that the district court erred when it determined that CHS's security interest attached only to crops grown by third parties on land that had been previously farmed by respondents before 2015. By notice of cross-appeal, respondents argue that the district court erred when it: determined that CHS had an interest in any of the crops grown in 2015; struck respondents' jury demand; amended its conclusions of law in a purported attempt to correct clearly erroneous findings of fact; and entered judgment against Brian Haugen and Shannon Haugen whose personal debts were discharged in bankruptcy. We affirm in part, reverse in part, and remand.

FACTS

Brian Haugen and Shannon Haugen are brothers and farmers in Goodhue County.[1] Before 2010, the brothers farmed with their father. In 2010, the three formed Lena Farms Partnership (the precursor to Lena Farms Partnership LLC). The Haugens' father left the partnership the next year, and Brian and Shannon continued to farm together under the partnership until Shannon formed his own entity, Gen X Farms LLC, in 2013.

In 2012, 2013, and 2014, Brian, Shannon, Lena Farms Partnership LLC, Lena Farms Partnership, and Gen X Farms LLC (doing business as Gen X Farms) borrowed from CHS

[1] For clarity's sake, this opinion refers to the Haugen brothers by their first names, Brian and Shannon, when discussing their separate farming entities and as "the Haugens" when discussing both brothers collectively.

to fund their farming businesses. In 2012, the Haugens and their farming entities borrowed $2,500,500. Later that year, the loan was increased to $3,250,700. In 2013, they borrowed $2,801,512. In 2014, they borrowed an additional $2,502,202.

The Haugens and their farming entities signed an agricultural security agreement for each loan. The collateral description in each of the security agreements granted CHS a security interest in any crops in which the Haugens and their farming entities have or will have an interest. The Haugens and their farming entities did not own any farm land. The collateral descriptions referred to no specific real property.

CHS perfected its security interests by filing financing statements with the Minnesota Secretary of State. To further collateralize their obligations, some of Brian and Shannon's other business entities, including MNTB Assets LLC and Forest Mills Land LLC, granted CHS mortgages in real property. Additionally, Shannon and his wife, Devon Haugen, mortgaged their home as collateral.

By 2014, the Haugens experienced financial difficulties and defaulted on their loans from CHS. By the time of trial, the Haugens and their farming entities owed CHS $1,855,664.87 from the 2012, 2013, and 2014 loans.[2] In 2015, CHS refused to finance the Haugens' farming businesses, and so the brothers pursued financing elsewhere. Brian and Shannon terminated their business relationship, and both attempted to independently find ways to fund their respective farming operations.

[2] At trial, respondents disputed the amount owed, but on appeal did not challenge the district court's findings concerning the amount owed.

Brian formed Lena Land Lease LLC in the fall of 2014 to lease agricultural land from landowners for the purpose of subleasing that land to other farming entities. Lena Land Lease finalized its leases with landlords in March 2015, acquiring more than 12,000 acres for the 2015 farming season.

Brian applied for other financing to support his farming business; contacting, among others, Central Management, a general partnership primarily located in Illinois. Previously, Brian worked with a member of one of Central Management's constituent LLCs, who was the CEO of an organization that advises family farms. Brian asked Central Management if it would fund Lena Farms directly. On April 30, 2015, Central Management loaned Lena Farms $250,000.

One of the main disputes in this case arises from conflicting subleases granted by Lena Land Lease. The subleases are signed, but not dated, and have varying effective dates. The first sublease, effective April 1, 2015, leased a total of 3,154.12 acres from Lena Land Lease to Lena Farms. Brian signed the sublease on behalf of Lena Land Lease and Lena Farms. The second sublease, effective April 15, 2015, leased the same acreage of land from Lena Land Lease to Central Management. This sublease was not signed until approximately June 4, 2015, and leased Central Management a 95% interest in the land. Both subleases were for the year 2015. There is no evidence in the record that the sublease to Lena Farms was canceled before or after the sublease to Central Management became effective.

Shannon also looked for ways to mitigate his financial problems. Shannon applied for loans from other financial institutions, but was unable to secure a loan to cover his

expenses for the 2015 planting season. At some point in time, Shannon's father suggested that Shannon sublease his land to Monica Poncelet, his father's romantic partner. In the past, both Shannon and Brian farmed for Poncelet. Gen X Farms LLC, Shannon's farming entity, leased Poncelet a 95% interest in the land for the 2015 planting season effective April 15, 2015. It is unclear when the sublease was signed, and the parties dispute whether the lease was signed before or after planting began. Although these exact dates are unclear, Shannon began planting sometime in April 2015. Shannon purchased everything needed for farming, and Poncelet reimbursed him. Shannon also performed all of the farming.

After the brothers and their farming entities defaulted on their loans, CHS filed an action to foreclose on the collateral from respondents' security agreements, and the real property from respondents' mortgages in September 2015. In 2016, Central Management moved for summary judgment.[3] The district court denied Central Management's motion for summary judgment.

Respondents requested a jury trial in September 2017, and CHS moved to strike their request. A month before trial, the district court granted CHS's motion to strike respondents' jury trial request. The district court held a bench trial over five days in February 2018.

Following trial, the district court granted judgment in favor of CHS against respondents in the amount of $1,855,644.87 and granted CHS the senior security interest

[3] Respondent Stacy Haugen (Brian's wife) also moved for summary judgment in 2016. The district court granted her summary judgment and dismissed the complaint against her because she had no personal interest in the collateral.

in the crops grown from 2012 to 2015 "on certain lands described in the complaint" as collateral. However, respondents' complaint did not provide any land descriptions of the acres farmed. The district court also granted CHS's request to foreclose on the real property mortgaged by respondents. The real property mortgage foreclosures are not at issue on appeal.

In 2018, respondents moved for amended findings, a new trial, and remittitur to limit the judgment against Central Management to only crops that were only grown on land formerly farmed by the Haugens and their farming entities.

The district court denied all of respondents' motions, except for respondents' motion to limit the judgment against Central Management to only the crops farmed on land previously farmed by the Haugens. However, the district court noted that it "has insufficient information at this time to determine the exact acreage."

The next month, respondents submitted a letter to the district court requesting permission to file a motion for reconsideration. The district court granted their request, and respondents filed a motion to reconsider.

Following a motion hearing, the district court denied respondents' motion for reconsideration, but amended its judgment to limit CHS's entitlement to crops grown on 1,741 acres of the approximately 3,100 acres subleased by Central Management. The district court based its ruling on the trial record and held that it was undisputed that only 1,741 acres of land were previously farmed by the Haugens and their farming entities. In the district court's amended judgment, the district court found that the value of the 1,741

acres of harvested crops on the land subleased to Central Management was $1,554,092.02, and the value of the harvested crops on the land subleased to Poncelet was $357,423.41.

This appeal and cross-appeal follow.

D E C I S I O N

Both CHS and respondents challenge the district court's determinations regarding CHS's security interest in the crops. CHS urges this court to uphold and reinstate the district court's original order and judgment concluding that it had a 100% interest in the crops grown and harvested in 2015, and reverse the district court's later amendments limiting the judgment so that CHS only had a security interest in the part of the 2015 crops that had been grown on the 1,741 acres previously farmed by the Haugens and their farming entities, but not the other 1,359 acres farmed under the direction of Central Management. In their cross-appeal, the Haugens argue that the district court erred when it determined that CHS had an interest in any of the crops grown in 2015 on land farmed by Poncelet or Central Management, as they claim that the Haugens and their farming entities had no, or limited, interest in the harvested crops.

"When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard." *In re Estate of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015) (quotation omitted). "[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . . The burden of showing error rests upon the one who relies upon it." *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464–65 (Minn. 1944).

The Uniform Commercial Code (UCC), subject to specific exceptions not relevant here, applies to "a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract." Minn. Stat. § 336.9-109(a)(1) (2018). Article 9 of the UCC governs secured transactions of "goods," which, by statutory definition, includes "crops grown, growing, or to be grown." Minn. Stat. § 336.9-102(a)(44)(iv) (2018).

In order to obtain a security interest in goods, a creditor must comply with the Article 9 attachment and perfection requirements. *See* Minn. Stat. §§ 336.9-203, -204, -303, and -401 (2018). "A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral." Minn. Stat. § 336.9-203(a). "[A] security interest is enforceable against the debtor and third parties" when: (1) "value has been given," (2) "the debtor has rights in the collateral or the power to transfer rights," and (3) the debtor has signed "a security agreement that provides a description of the collateral." Minn. Stat. § 336.9-203(b). The UCC refers to "rights in the collateral," not solely the *ownership* of the collateral. Minn. Stat. § 336.9-203(b)(2) (stating that a security interest may attach to collateral if "the debtor has rights in the collateral or the power to transfer rights in the collateral"). "Rights in the collateral . . . include full ownership and limited rights that fall short of full ownership." *Border State Bank of Greenbush v. Bagley Livestock Exch., Inc.*, 690 N.W.2d 326, 332 (Minn. App. 2004), *review denied* (Minn. Feb. 23, 2005).

"To perfect the security interest, both the security agreement and financing statement must contain an adequate description of the collateral." *Border State*, 690

N.W.2d at 331. "We liberally construe" collateral descriptions "because their essential purpose is to provide notice, not to definitively describe each item of collateral." *Id.* One of the methods for obtaining perfection of a security interest is to file the financing statement in a public office. Minn. Stat. § 336.9-310 (2018). By filing the financing statement to perfect its security interest, the secured party is protected against third parties who subsequently purchase or obtain an interest in the collateral. *See* Minn. Stat. § 336.9-322(a)(2) (2018) ("A perfected security interest . . . has priority over a conflicting unperfected security interest."). "A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected." Minn. Stat. § 336.9-315(c) (2018).

On appeal, the parties do not contest that CHS had a perfected security interest in crops grown by the Haugens and their farming entities by virtue of the proper filing of a financing statement by CHS. The parties also do not contest that the value of the harvested crops grown on the land subleased to Central Management was $1,554,092.02, the value of the harvested crops on the land subleased to Poncelet was $357,423.41, and the amount of CHS's judgment against the Haugens and their farming entities is $1,855,644.87, exclusive of costs and interest accrued after trial. CHS has only appealed the district court's amended judgment that limited its security rights to the harvested crops grown on land subleased to Central Management. CHS claims that the district court was correct in its original judgment that CHS was entitled to its security interest in all of the harvested crops and requests that we reverse the district court's amended judgment. Respondents, in their cross-appeal, request that we reverse both the original and amended judgments of the

district court and remand the case for a jury trial. In support of their request, respondents claim that the district court erred by relying upon *Thompson v. Danner*, 507 N.W.2d 550 (N.D. 1993), and other foreign decisions, and that this is essentially a dispute over the ownership of the harvested crops—a question of fact that should have been presented to a jury. Respondents also argue that the district court erred when it failed to reform its credibility findings in response to their motion to amend findings.

I. The district court erred in its amended orders when it determined that CHS only had a perfected security interest in crops grown on land previously farmed by the Haugens and their farming entities.

CHS challenges the district court's post-trial ruling that limited its security interest in crops grown on land subleased to Central Management to only those crops grown on the 1,731 acres of subleased land that had been previously farmed by the Haugens and their farming entities.

The three security agreements between the Haugens and their farming entities and CHS describe the collateral as follows:

> All of the following whether now owned or hereafter acquired; . . . All crops growing, grown, or to be grown, or to be grown in [2012, 2013, or 2014] and subsequent years . . . .
>
> The collateral includes any and all of Grantor's present and future rights, title and interest in and to all crops growing or to be planted, cultivated, grown, raised, and/or harvested together with any and all agricultural and farm products produced or derived therefrom, of every nature and kind . . . whether held by Grantor or by others.

According to these agreements, the collateral description attaches a security interest to any crops in which the Haugens and their farming entities have an interest. There is

neither a legal description of, nor reference to, any specific land leased by Central Management in the agreement, nor is there a requirement that the crops in which CHS secures an interest be grown on land owned by the Haugens and their farming entities. The agreements simply provide that: if the Haugens and their farming entities had an interest in a crop, CHS gets a security interest in the crop. Thus, the agreements make it clear that it does not matter if the Haugens and their farming entities planted or grew crops on land they previously farmed, or land never before farmed by them.

By limiting appellant's security interest to only crops grown on land that the Haugens and their farming entities previously farmed, the district court attempted to rewrite the agreements despite there being no such limitation set forth in the agreements. Tellingly, respondents admit that they are unable to explain the district court's rationale for making such limitation.

For these reasons, we agree with CHS that the district court erred when it amended its post-trial order to limit CHS's security interest to only those crops grown on land previously farmed by the Haugens and their farming entities. Therefore, we reverse the district court's post-trial ruling limiting CHS's judgment against respondents to only crops grown on acres previously farmed by the Haugens and their farming entities.

II. The appellate court is unable to fully review the district court's original order and judgment because the district court failed to identify the law upon which the determinations are based, and the findings of fact in the order are insufficient and often conflicting without resolution.

Because we reverse the district court's amended judgment, we now turn to the Haugen's cross-appeal challenging the district court's original order and judgment, in

which it determined that CHS had a 100% interest in all of the 2015 crops grown on land subleased by third parties: Poncelet and Central Management. Yet, it appears that the district court was not quite satisfied with this result. In its amended order, the district court attempted to construct a scenario in which Central Management was free from CHS's security interest thereby entitling it to the proceeds from crops grown on leased land not formerly farmed by the Haugens and their farming entities. But, without citing to any law or specifying any distinguishing facts, the district court left intact in its amended order the conclusion that CHS had a security interest the crops that Poncelet grew on land leased from respondent Gen X.

The Haugens argue that the district court erred as a matter of law in making these conclusions because they were based upon law from foreign states that is inconsistent with Minnesota law. However, because there is no helpful Minnesota caselaw regarding security interests in crops grown on subleased lands, we may consider caselaw from other states for its persuasive value. *See State v. McClenton*, 781 N.W.2d 181, 191 (Minn. App. 2010), *review denied* (Minn. June 29, 2010) ("[A]lthough we are not bound to follow precedent from other states or federal courts, these authorities can be persuasive.").

In the district court's analysis, it relied on three cases: *Sw. Ga. Prod. Credit Ass'n v. James*, 350 S.E.2d 786 (Ga. Ct. App. 1986); *Decatur Prod. Credit Ass'n v. Murphy*, 456 N.E.2d 267 (Ill. App. Ct. 1983); and *Thompson*, 507 N.W.2d at 550. Based on these cases, the district court concluded that a debtors' interest in land was sufficient to attach a lien on "crops to be grown" to any crops subsequently planted on the land. CHS urges us to rely on these cases to reach the same conclusion.

However, we conclude that each of these cases is distinguishable from the case at hand. In all three cases, the grantors entered a security agreement that was specifically tied to land and the grantors retained an interest in the operations or crops. The collateral descriptions included descriptions of the land farmed by the grantors, and the security agreements attached an interest to any crops grown on that specific land. *See Sw. Ga. Prod.*, 350 S.E.2d at 787 (stating that the parties entered into a joint venture); *Decatur Prod.*, 456 N.E.2d at 270 (noting the partial transfer of debtor's interest in crops); *Thompson*, 507 N.W.2d at 553 (stating that the parties entered into a joint venture). Based on these factors, in all three cases, the bank's security interest attached to the crops at issue.

But in this case, the 2012, 2013, and 2014 security agreements did not describe any land as relevant to CHS's security interest. Instead, the collateral descriptions provide that the Haugens and their farming entities granted CHS an interest in any *crops* in which the Haugens and their farming entities have or will have an interest. Further, the lease agreements were cash-rent agreements, not crop-share agreements. Because of this, the caselaw cited by the district court, and relied upon by CHS, does not aid us in assessing whether Gen X had an interest in the crops grown in 2015.

The Haugens, on the other hand, cite to two cases from other states which they claim provide support for determining an interest in crops grown by a third party on land subleased by a debtor: *Colo. Nat'l Bank-Longmont v. Fegan*, 827 P.2d 796 (Kan. App. 1992), and *Janitell v. State Bank of Wiley*, 919 P.2d 921 (Colo. App. 1996).

In *Colo. Nat'l Bank*, the bank loaned money to the Fegans for farming purposes, and as collateral, the Fegans granted the bank an interest in crops growing or to be grown.

827 P.2d at 797. When the Fegans experienced financial hardship, they leased their land to their onsite farm manager under a crop-share lease with one-third of the crop to be paid as rent to the Fegans. *Id.* at 797–98. The Kansas Court of Appeals held that the bank only had an interest in one-third of the crops because the Fegans only had a one-third interest in the crops. *Id.* at 800. The court noted that: "[t]he only interest held by [the bank] was in the crops under Article 9 of the Uniform Commercial Code—an act which expressly does not cover security interests in land." *Id.* at 799. Accordingly, the security agreement "could not cover the Fegans' interest in the land, which they were free to lease." *Id.* Because "the ownership interest of the lessor goes only to the amount or share due [to] the lessor as rent," the Fegans did not have an interest in two-thirds of the crops. *Id.*

In the second case, the Janitells borrowed money from a bank and granted the bank a deed of trust as security. *Janitell*, 919 P.2d at 922. After the bank commenced foreclosure proceedings on the property, the Janitells leased their land to Janitell Grain. *Id.* After Janitell Grain planted the crops, the bank received a certificate of redemption on the property. *Id.* The Janitells had also granted a security interest, held by United Land Holdings, in "[g]rowing crops now planted and/or hereafter to be planted and grown . . . and contract rights." *Id.* at 923. The Colorado Court of Appeals concluded that "[w]hile the Janitells had a contractual right to the rental payments under the lease, they had no contractual right to or other interest in any portion of crops Janitell Grain might choose to grow on the property." *Id.* at 924. Therefore, United Land Holdings did not have a security interest in the crop grown by Janitell Grain. *Id.*

In both cases, the grantors granted a bank a security interest in crops that the grantors had or would have an interest in and that was not related to specific land. The grantors lacked an express contractual interest in the crops or operations. As both cases note, the UCC expressly does not cover land. *Id.*; *Colo. Nat'l Bank*, 827 P.2d at 799.

Based upon our review of the caselaw, we agree with the Haugens that the appropriate analysis here is that found in *Colo. Nat'l Bank* and *Janitell*, and that the district court, to the extent that it assumed that CHS's security interest was tied to crops grown on specific land, erred in its reliance on caselaw based on such an assumption.

Using the analysis set forth in *Colo. Nat'l Bank* and *Janitell*, the question for the district court was a determination of what interest the Haugens and their farming entities had in the 2015 harvested crops. The parties do not dispute that the Haugens and their farming entities would have an interest in crops planted by them. In that scenario, under the UCC, the third-party purchasers of such previously planted crops under a lease, such as Poncelet and Central Management, would take those crops subject to the perfected security interests of CHS. On the other hand, if the Haugens and their farming entities did not have an interest in some of the crops planted and grown by Poncelet or Central Management after the subleases went into effect, then CHS would not have a security interest in such crops.

Both parties argue first that we need only look to one Minnesota statute to answer the question before us. Minn. Stat. § 557.10 (2018) states: "Planted and growing crops are personal property of the person or entity that has the property right to plant the crops."

CHS claims that since Gen X and Lena Land Lease or Lena Farm had the right to farm the land, they had an interest in the harvested crops, thereby triggering its interest. The Haugens, on the other hand, claim that if Minn. Stat. § 557.10 governs property rights to crops, then this matter should be reversed and remanded for a new trial on the basis that the harvested crops were the personal property of Poncelet and Central Management and that only they had a right under the sublease to plant the crops. But, when read in the context of the entire statutory scheme, which is premised upon the foreclosure of underlying real property, we conclude that this statute is inapplicable. Because the crops at issue do not involve an underlying real property action—as they underlie an action to foreclose a security agreement involving crops as collateral—we hold that Minn. Stat. § 557.10 does not apply to this case.

After determining that Minn. Stat. § 557.10 does not apply in this case, we move on to the Haugens' substantive arguments. The Haugens argue that there is insufficient evidence that the farming entity, Lena Farms, had an interest in the crops grown on land leased from Lena Land Lease, which became effective when the planting began in April 2015.

The district court made the following findings of fact, which are undisputed on appeal. Lena Land Lease subleased "about 3,100" acres to Lena Farms. The sublease was signed, but not dated, and became effective on April 1, 2015. The sublease provided that Lena Land Lease would "let and lease unto [Lena Farms] all of the Farmland." This sublease was never canceled. Lena Land Lease subsequently entered into a sublease for the same acreage with Central Management. There is no dispute that the sublease signed

from Lena Land Lease to Central Management occurred after the sublease from Lena Land Lease to Lena Farms. Although Brian testified that he had an oral agreement with Central Management sometime in early 2015, the district court found no evidence of the agreement in the record. Instead, the record shows that in late April, Central Management loaned Lena Farms $250,000. The earliest record evidence that there were discussions between Lena Land Lease and Central Management regarding a sublease was in May 2015. The finalized sublease, signed on June 4, 2015, granted Central Management a 95% interest in the land and allowed Lena Land Lease—an entity that only leased and subleased farmland—to maintain a 5% interest in the land. This sublease occurred well after the commencement of planting. The district court found

> [T]hat, *eventually*, the disputed acres were farmed primarily with input from [Central Management] . . . . Unfortunately, the fact that [Central Management] chose, after months of dithering, to take over and farm the acres itself instead of continuing to stealthily fund [Lena Farms] does not change the fact that its ownership of the growing crops was subject to [CHS's] first order lien.

(Emphasis added.)

While acknowledging that Central Management primarily did the work of growing the crops, the district court did not specifically find: (1) whether Lena Farms planted all or most of the crops that were eventually harvested by Central Management; (2) the nature and extent of its interest in those crops; or (3) whether it was Lena Farms, in accordance with the sublease with Central Management, that had an interest in 5% of the leased land.

CHS argues that its security interest attached to all of the crops grown on the approximately 3,100 acres in Minnesota because Central Management was unable to show

that it obtained a valid sublease from Lena Land Lease for the same acreage that it had previously subleased to Lena Farms, but which it failed to cancel. However, because Brian was the principal actor for both Lena Land Lease and Lena Farms, Lena Farms had actual notice of the subsequent lease between Lena Land Lease and Central Management. *Washington Mut. Bank, F.A. v. Elfelt*, 756 N.W.2d 501, 507 (Minn. App. 2008) (providing that actual notice is "given directly to, or received personally by, a party"), *review denied* (Minn. Dec. 16, 2008). Lena Farms was also certainly aware that Central Management "eventually" performed a majority of the farming on the land that was covered by its sublease and made no objection to Central Management's growing and harvesting of the crops. Under these circumstances, Lena Farms, either by virtue of its implicit consent or by its inaction, accepted the subsequent sublease of its leased land to Central Management, thereby relinquishing its rights to the crops grown as a consequence of the sublease. Thus, we conclude that the district court erred to the extent that it found that CHS was not entitled to 100% of the crops grown by Central Management solely on the grounds that it failed to show that it had obtained a valid sublease from Lena Farms.

A better argument made by CHS is that, while Lena Farms had the sublease for the acreage, it planted substantially all of the crops using the $250,000 loaned to it by Central Management *before* the effective date of the lease on June 4, 2015. While there is support in the record for this finding, the district court did not find that Lena Farms performed *all* of the planting prior to the effective date of the sublease to Central Management so as to entitle Lena Farms to the crops grown as a result of that work. The district court also did not resolve the factual and legal issue of whether there was some portion of the

approximately 3,100 acres farmed by Central Management independently of Lena Farms or Lena Land Lease.

Further, the district court failed to explain why it determined that CHS had a 100% interest in the crops planted on the Poncelet parcel. It is not clear from the district court's order whether Shannon's farming operation, Gen X, had an interest in the crops by virtue of the fact that it planted some or all of the crops, whether Gen X independently retained and farmed 5% of the land under the sublease agreement, whether Poncelet had acreage that she was able to farm without any contribution or input from Gen X, or whether the nature of the close relationship between Poncelet, Shannon, and Gen X merited the consideration of whether they were engaged in a joint venture for the purpose of circumventing CHS's security interest.

Based upon our review of the district court's orders and the record before us, we cannot make these determinations because the district court did not make the relevant findings of fact. This court does not make findings of fact on appeal. *Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966) ("It is not within the province of [appellate courts] to determine issues of fact on appeal.").

In conclusion, we reverse and remand for the district court to make further findings consistent with this opinion in order to determine what interest the Haugens and their farming entities had in the 2015 crops with the expectation that CHS's security interest would attach to whatever interest that may be determined.

III. The district court did not err when it denied respondents' request for a jury trial.

The Haugens argue that the district court erred when it denied their demand for a jury trial. Whether respondents have a right to a jury trial is a legal question requiring interpretation and application of the Minnesota Constitution, which we review de novo. *United Prairie Bank-Mountain Lake v. Haugen Nutrition & Equip., LLC*, 813 N.W.2d 49, 53 (Minn. 2012). "The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy." Minn. Const. art. I, § 4. A party is not constitutionally entitled to a trial by jury if a party raises a "type of action" that was not entitled to "a jury trial at the time the Minnesota Constitution was adopted." *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 149 (Minn. 2001). However, the right to a jury trial is not limited to only those causes of action that existed in 1857 when Minnesota adopted its constitution. *United Prairie Bank-Mountain Lake*, 813 N.W.2d at 53.

To determine whether the right to a jury trial exists, we apply a two-part test. *Schmitz v. U.S. Steel Corp.*, 831 N.W.2d 656, 675 (Minn. App. 2013), *aff'd*, 852 N.W.2d 669 (Minn. 2014). First, we analyze "the substance of the claim based upon the pleadings and the underlying elements of the claim." *Id.*; *United Prairie Bank-Mountain Lake*, 813 N.W.2d at 53–54. Based on the underlying elements, we analyze whether the type of action is "an action[] at law" that existed in 1857 "for which the constitution guarantees a right to jury trial, [or an] action[] in equity, for which there is no constitutional right to a jury trial." *United Prairie Bank-Mountain Lake*, 813 N.W.2d at 54 (alterations in the original).

Second, this court analyzes the "nature of the relief" being sought. *Id.* In order to have a right to a jury trial, a plaintiff must seek a legal, and not an equitable, remedy. *Id.*

CHS's cause of action was an action to foreclose against mortgaged real property and collateral personal property. Respondents agree that, at first glance, this cause of action is an action in equity and therefore does not *entitle* them to a jury trial. Yet, respondents rely on the Minnesota Supreme Court's decision in *United Prairie Bank-Mountain Lake* for the proposition that this court should look to the "substantive nature" of the claim—specifically that CHS sought determination of who owns the crops—to afford respondents the right to a jury trial. 813 N.W.2d at 54.

In *United Prairie Bank-Mountain Lake*, the Minnesota Supreme Court held that a bank's claim for attorney fees arising from a contract was legal in nature and therefore entitled the appellants to a jury trial. *Id.* at 57. In that case, appellants defaulted on promissory notes held by the bank. *Id.* at 52. In their loan agreements, appellants contracted to pay the bank's reasonable costs and attorney fees associated with protecting the bank's security interests. *Id.* The Minnesota Supreme Court first considered the "substantive nature" of the bank's claims "based on the pleadings and the underlying elements of the cause of action." *Id.* at 54. The bank alleged in its complaint that appellants' default on the promissory notes constituted a breach of contract and thus entitled the bank to attorney fees. *Id.* at 54–55. The Minnesota Supreme Court considered this a claim for "contractual indemnity," which is "an action at law that gives rise to a jury trial right." *Id.* at 55. The Minnesota Supreme Court then considered "the nature of the remedy sought" and determined that the bank's claim was "essentially a form of money

damages for the appellant's breach of the Loan Documents." *Id.* at 56. Accordingly, the Minnesota Supreme Court determined that the bank's claim for attorney fees based on their contract was legal in nature and entitled appellants to the right to a jury trial under the Minnesota Constitution. *Id.* at 57.

In the present case, we must first consider the "substantive nature" of CHS's claims "based on the pleadings and the underlying elements of the claim," and then consider "the nature of the relief sought." *Id.* at 54. Unlike *United Prairie Bank-Mountain Lake,* in which the substantive nature of the claim was for contractual indemnity, CHS's complaint sought foreclosure against the 2012, 2013, and 2014 promissory notes and mortgages. "[A] mortgagee, from time immemorial, has had a right to foreclose his mortgage by bringing an action in a court of equity . . . " *Ahlers v. Jones*, 259 N.W. 397, 398 (Minn. 1935). CHS argues, and we agree, that a foreclosure action is plainly an action in equity.

Respondents rely on several cases to show that when the underlying question is who owns the crops, the claim is a legal one. *See Thomas v. Hanson*, 208 N.W. 649, 649–50 (Minn. 1926); *Border State Bank of Greenbrush*, 690 N.W.2d at 331; *Jumiska v. Andrews*, 92 N.W. 470, 471 (Minn. 1902). But these cases do not address whether a claim was an action in law or an action in equity for the purpose of determining whether the constitutional right to a jury trial applies. Instead, these cases are merely cases in which the issues were tried to a jury. Therefore, these cases are not controlling.

Therefore, because CHS's claims were for foreclosure, which is an action in equity, the district court did not err when it denied respondents' request for a jury trial.

IV. The district court did not err when it declined to amend its findings regarding the Haugens' credibility when it amended its conclusions of law.

Respondents argue that the district court should have amended its credibility findings when it amended its order to state that the 3,154.12 acres farmed by Central Management were *not* all previously farmed by the Haugens and their farming entities. Although we have already determined that the district court erred in its post-trial ruling, we nonetheless separately address this issue substantively.

"The purpose of a motion for amended findings is to permit the trial court a review of its own exercise of discretion." *Johnson v. Johnson*, 563 N.W.2d 77, 78 (Minn. App. 1997) (quotation omitted), *review denied* (Minn. June 30, 1997). Absent a clear abuse of discretion, this court will not disturb a district court's denial of a motion for amended findings. *State ex rel. Fort Snelling State Park Ass'n v. Minneapolis Park & Recreation Bd.*, 673 N.W.2d 169, 177–78 (Minn. App. 2003), *review denied* (Minn. Mar. 16, 2004). This court does not set aside findings of fact "unless clearly erroneous." Minn. R. Civ. P. 52.01.

After the district court decided in favor of CHS, respondents filed a motion for amended findings, a new trial, and remittitur. The district court denied respondents' motion for amended findings, but limited the judgment against Central Management to crops grown on subleased lands formerly farmed by the Haugens and their farming entities. After the district court granted CHS leave to file a motion to reconsider, the district court stated that its previous order was ambiguous and subject to clarification according to *Stieler v. Stieler*, 70 N.W.2d 127, 131 (Minn. 1955) (providing that a court may clarify its

judgment if it is ambiguous without the clarification constituting an amendment). The district court then stated that its prior order "should have limited the judgment against Central Management to the crops grown on the 1,741 acres previously farmed by the Haugens and their corporate entities."

Respondents argue that the district court made faulty credibility determinations premised upon its erroneous finding that all of the land that Central Management farmed was land previously farmed by the Haugens and their farming entities. Specifically, respondents challenge the credibility findings in the district court's original order related to this issue:

> By itself, it is not fatal to [respondents'] claim that [Central Management] leased [Lena Farms'] specific land. But given that there were many other acres available, it is very suspicious that [Central Management] wound up renting more or less the exact acres that [Lena Farms] had farmed for several years.

And:

> It is [respondents'] position that [Central Management] had always intended to farm in Minnesota after its executives learned that [another farmer's] acres would be available. They contend that [Central Management] just happened to pick the acres formerly farmed by [Lena Farms] . . . . Accepting that [Central Management] chose [Lena Farms'] acres by pure coincidence strains credulity until it breaks.

Respondents contend that the district court should have amended these credibility findings when it clarified in its amended order that Central Management did not farm the exact same acres previously farmed by Lena Farms.

But the district court's determinations regarding the Haugens' credibility were broader than just their testimony regarding the specific acres that were farmed by Central

Management or Poncelet. For example, the district court found that most of the crops planted by Lena Farms had been planted before Central Management signed a sublease in June. In so finding, the district court rejected Brian's testimony that Central Management was farming the crops prior to the signing of the sublease, declaring that Brian's testimony stating that he "was not concerned about putting in writing a contract with an outside partnership that was looking to farm LFP's usual acres" was "not convincing." In finding that CHS met its burden of proof regarding the Haugens' debt, the district court declared that the "documentary evidence provided at trial was credible, and Shannon Haugen's testimony was not." The district court was also critical of Brian's representation to a crop insurance company that Lena Farm was the sole owner of the crops and yet claimed in district court that Central Management owned 95% of the crops. The district court found that "[b]oth circumstances severely undermine his credibility." Further, the district court found that "[e]ven if various [respondents] were not colluding to keep [CHS] from seizing the 2015 crops, the evidence suggests that [Lena Farms] had an interest in them when they were planted." In its conclusion, the district court stated: "The picture painted by the totality of the evidence presented seems to suggest that both Haugen brothers were trying, through rather inventive financial wrangling, to keep farming in 2015. . . . They were, contrary to Brian's testimony, trying to "farm out" of the hole they had dug themselves."

We reverse the district court's amended ruling that limited the judgment against Central Management to only the crops grown on 1,731 acres of land that had been previously farmed by the Haugens and their farming entities as clearly erroneous on the basis that CHS's security interest in the crops was tied to the crops themselves and not tied

to any specific parcel of land. In light of our holding, any credibility determinations specifically associated with this erroneous ruling have limited relevancy. Further, these specific credibility findings are also consistent with the district court's overall assessment of the Haugens' credibility and how it resolved the factual issues in the case.

Because we defer to the district court's assessment of credibility, Minn. R. Civ. P. 50.01, we conclude that the district court did not err when it denied respondents' motion to amend these specific credibility determinations.

V. The district court did not err when it granted judgment against Brian and Shannon because their request to vacate their personal judgments was untimely.

Respondents argue that the district court should have vacated the personal judgments against Brian and Shannon because they were granted bankruptcy discharges in 2016.

At trial in this case, respondents did not argue that Brian and Shannon should not be held personally liable for any debt to CHS because of their bankruptcy discharges. At trial, Brian's and Shannon's bankruptcies were briefly mentioned in testimony, but respondents failed to argue that the personal bankruptcies should be taken into account when ordering judgment. Indeed, respondents failed to submit the bankruptcy discharges to the district court, and there was no confirmation during trial that Brian and Shannon had actually received bankruptcy discharges.

The first time respondents raised this issue was in their motion for amended findings, a new trial, and remittitur. They argued that the personal claims against Brian and Shannon had been discharged in bankruptcy. The district court addressed this

argument in its post-trial motion order, concluding that it had "insufficient information upon which to alter the judgments entered herein on the basis of a bankruptcy proceeding" because it was unaware of any bankruptcy documents in the record.

In response to the district court's order denying their motion for amended findings, a new trial, and remittitur, respondents filed copies of Brian's and Shannon's bankruptcy-discharge orders. These documents were not in the record when the district court made its original ruling. The district court did not address these documents or the bankruptcy issue any further.

In the district court's last order in which it clarified the judgment, the district court gave the following instruction: "Within 30 days of the date of this order, the parties shall submit proposed amended orders for judgment . . . . The proposed orders shall also include language relating to the personal bankruptcy proceedings regarding Brian and Shannon Haugen." Respondents filed a proposed amended order for judgment with the district court, which suggested language relieving Brian and Shannon of personal liability on the loans. The district court did not include respondents' proposed language in its amended order for judgment.

An issue is raised "too late" if it is first raised in a motion for a new trial or in a motion for amended findings. *See Antonson v. Ekvall*, 186 N.W.2d 187, 189 (Minn. 1971) (stating that a new issue cannot be raised in a motion for a new trial); *see also Allen v. Central Motors, Inc.*, 283 N.W. 490, 492 (Minn. 1939) (stating that a new fact issue cannot be raised in a motion for amended findings). Respondents did not raise the issue until they moved for a new trial and amended findings; thus, the issue was raised too late. Therefore,

we do not address respondents' substantive argument that the district court erred by holding Brian and Shannon personally liable.

In conclusion, because the district court erred in certain of its unfounded inconsistent findings regarding CHS's interest in the crops grown and harvested in 2015, we reverse and remand for additional findings. On remand, the district court may, in its discretion, reopen the factual record and address any additional legal arguments raised by the parties.

Affirmed in part, reversed in part, and remanded.