*This opinion is nonprecedential except as provided by*
*Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A21-0032**

Mark Lange,
Respondent,

vs.

Roger Olson,
Appellant.

**Filed September 7, 2021**
**Affirmed**
**Jesson, Judge**

Hennepin County District Court
File No. 27-CV-19-9051

Robert J. Shainess, Capstone Law, LLC, Minneapolis, Minnesota (for respondent)

Nathan M. Hansen, Hansen Law Office, North St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Ross, Judge; and Jesson, Judge.

**NONPRECEDENTIAL OPINION**

**JESSON**, Judge

Appellant Roger Olson promised to pay respondent Mark Lange more than $240,000 in return for Lange's assistance with the sale of Olson's company. Olson paid Lange less than a quarter of the promised amount, causing Lange to sue for the remainder. They eventually settled their dispute through mediation, but Olson failed to pay the agreed-upon sum. At the district court hearing on Lange's motion to enforce their settlement agreement, Olson claimed the agreement was not binding. The district court

disagreed and granted Lange's motion. Olson appeals. Because Olson forfeited his sole argument on appeal, we affirm.

## FACTS

When Olson decided to sell his software company in 2018, he asked Lange—the company's chief operating officer—to help find a broker and meet with potential buyers. By October of that year, Olson reached a purchase agreement with a buyer. But the buyer conditioned the sale on Lange remaining an employee of the company for an additional three years and signing a noncompete agreement, which Lange had not intended to do. So, Olson persuaded Lange to stay on by promising to pay him $240,000 and a percentage of the company's future earnings. Shortly after the sale, Olson made a partial payment of $60,000 to Lange, but he made no additional payments.

After six months without further payments, Lange sued Olson. Then, in May 2020, they reached a settlement agreement through mediation. The mediation took place by video conference due to the COVID-19 pandemic, so the parties were unable to sign a physical copy of their settlement agreement at the time. Instead, the mediator sent an email to counsel for the parties that contained the settlement terms and asked them to "please hit 'Reply All' to this email and confirm that these are the terms your client has agreed to in settlement of this matter." Lange's counsel replied the same day, stating: "My client agrees." And approximately two weeks later, Olson's counsel responded to the mediator affirmatively, stating: "we are the the [sic] terms in this email were the terms that were

agreed too [sic]," and "[s]orry I thought this had been done and I thought that what was wrote [sic] from my client also satisfied what you wanted."[1]

But, several days later, Olson's counsel emailed Lange's counsel and alleged that "fraud was involved in the sale of the business," declaring, "seems like that may unwind everything." Olson's counsel offered neither evidence of the alleged fraud nor an explanation of its effect on their settlement agreement.

Lange then moved to enforce the settlement agreement. Olson did not respond to Lange's motion, but the district court permitted a hearing nonetheless. At that hearing, Olson claimed that Lange had committed fraud related to the sale of the business, that the email Olson's counsel sent confirming Olson's agreement to the settlement was not binding, and that mediation was not binding. Again, Olson offered neither evidence nor an explanation in support of these arguments.

The district court granted Lange's motion, finding that "the parties came to a verbal agreement during mediation" and that "[t]he parties' attorneys agreed that [the mediator's] email accurately summarized their clients' agreement."[2] The district court also found that the parties' agreement "contained a definite offer and acceptance and demonstrated a

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[1] The district court acknowledged that multiple typographical errors in the reply email from Olson's counsel make it difficult to read, but noted that Olson did not argue that he disagreed with the terms described in the mediator's email. The court found that the reply email did indeed indicate Olson's agreement, and Olson does not contest this on appeal.

[2] The subject line of the email was "Mark Lange/Roger Olson settlement," and each of the responses from counsels confirming their client's agreement to the settlement terms contained the counsel's name, their professional email addresses, and the dates and times the emails were sent.

meeting of the minds" and that Olson "submitted no evidence that the settlement agreement is vulnerable."

Olson appeals.

**DECISION**

Olson's sole argument on appeal is that the settlement agreement was not valid under the Minnesota Civil Mediation Act, Minn. Stat. §§ 572.31-.40 (2020), because it was not signed by the parties and dated. We are not persuaded.

Olson correctly observes that, in cases to which it applies, the Minnesota Civil Mediation Act requires a mediated settlement agreement to be signed by the parties and dated. Minn. Stat. § 572.33, subd. 4. The Act also explains that "[t]he effect of a mediated settlement agreement shall be determined under principles of law applicable to contract." Minn. Stat. § 572.35, subd. 1. And it further provides that courts may only set aside or reform a settlement agreement "if appropriate under the principles of law applicable to contracts." Minn. Stat. § 572.36.[3]

But, as he conceded during oral argument to this court, Olson did not present this date-and-signature argument to the district court. In fact, Olson did not file *any* responsive documents to the district court. And although he orally asserted at the district court hearing

[3] We note that under contract law, this court has acknowledged that emails can constitute electronic signatures. *SN4, LLC v. Anchor Bank, FSB*, 848 N.W.2d 559, 567-68 (Minn. App. 2014), *review denied* (Minn. Sept. 16, 2014). Likewise, where a signature is required to enforce a contract, this court has held that a typewritten signature satisfies that requirement. *Simplex Supplies, Inc. v. Abhe & Svoboda, Inc.*, 586 N.W.2d 797, 802 (Minn. App. 1998). Furthermore, "[a] settlement agreement evidenced by correspondence between parties' attorneys is binding and enforceable." *Schumann v. Northtown Ins. Agency, Inc.*, 452 N.W.2d 482, 482 (Minn. App. 1990).

that his email agreeing to the terms of the settlement was not binding, he never claimed that the emailed settlement agreement lacked signatures and dates as required by the Minnesota Civil Mediation Act. Because we do not consider issues that were not presented to and considered by the district court, Olson's sole argument is forfeited. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

To convince us otherwise, Olson orally asserted to this court that he did not forfeit this date-and-signature argument because it was the district court's responsibility to raise the argument on Olson's behalf. But Olson neither briefed this counterargument nor provided a legal basis for it at oral argument. Issues not briefed on appeal are waived, *Moore v. Hoff*, 821 N.W.2d 591, 595 n.2 (Minn. App. 2012), as are arguments based on mere assertion. *Brown v. Lee*, 859 N.W.2d 836, 841 (Minn. App. 2015), *review denied* (Minn. May 19, 2015). Accordingly, we do not reach the merits of Olson's date-and-signature argument.

**Affirmed.**