

*This opinion is nonprecedential except as provided by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
A20-0573**

Steven Lee Mittelstaedt, et al.,
Appellants,

vs.

William H. Henney, et al.,
Respondents.

**Filed June 27, 2022
Reversed and remanded
Jesson, Judge**

St. Louis County District Court
File Nos. 69DU-CV-18-951, 69VI-CV-17-451, 69VI-CV-17-287

Adam C. Hagedorn, Charles J. Lloyd, Livgard, Lloyd & Christel PLLP, Minneapolis,
Minnesota (for appellants)

William H. Henney, Minnetonka, Minnesota (attorney pro se and for respondents)

Considered and decided by Jesson, Presiding Judge; Cochran, Judge; and
Slieter, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

As part of a larger business dispute, appellant Steven Mittelstaedt claimed that respondent-attorney William Henney breached his fiduciary duties to Mittelstaedt by failing to disclose his participation in a lease agreement involving Mittelstaedt's home and place of business. In addition to responding to other claims against Henney's business and

partner, Henney moved for summary judgment on the breach-of-fiduciary-duty claim. The district court granted Henney's motion, dismissing Mittelstaedt's breach-of-fiduciary-duty claim against Henney. Mittelstaedt appealed. We affirmed summary judgment on Mittelstaedt's breach-of-fiduciary-duty claim against Henney on a different ground than the district court based on Mittelstaedt's failure to serve the expert affidavit required by Minnesota Statutes section 544.42 (2018). On further review, the Minnesota Supreme Court held that section 544.42 does apply to breach-of-fiduciary-duty claims, but concluded that we erred in our analysis for determining whether experts were required in this case. Accordingly, the supreme court reversed and remanded for consideration of the grounds for summary judgment originally addressed by the district court. Because we conclude that disputed facts preclude summary judgment on the breach-of-fiduciary-duty claim, we reverse and remand.

FACTS

This dispute involves business partners who each operated multiple, intertwined businesses. Mittelstaedt and respondent John Prosser met at a trade show around 2008 and developed a partnership where Prosser financed trucks that Mittelstaedt would repair and sell. A couple of years into that business relationship, respondent Prosser introduced Mittelstaedt to Prosser's attorney, Henney. Henney later provided legal advice to Mittelstaedt regarding an insurance claim and (to at least some degree) Mittelstaedt's divorce.

In 2012, in an effort to increase his iron ore hauling operations, Mittelstaedt relocated to a property in the city of Virginia. Beacon Bank, the owner of the Virginia

property, drafted two leases for the property. The first was a residential lease for portion of the property with a house and a garage. The second was a commercial lease for the remainder of the property, which included a large garage where Mittelstaedt's company's trucks could be serviced and repaired. Mittelstaedt paid his bank \$60,000 to include an option-to-purchase clause in both leases.

But following the bankruptcy of his sole client, causing his business to stagnate, Mittelstaedt fell behind on lease payments to the bank. Hoping to remain on the property—and ultimately purchase it—Mittelstaedt asked Prosser if he would buy the property from Beacon Bank and, in turn, lease it to Mittelstaedt with an option to purchase. Prosser agreed, and in March 2015 he signed a purchase agreement with the bank for the two parcels leased by Mittelstaedt. Prosser and Henney then created respondent Maxim Management LLC (Maxim) to own and manage the property.

In April 2015, Maxim and Mittelstaedt's company, Wide Open Services, entered into the first lease agreement with an option to purchase. Henney drafted all of the documents related to the property between Mittelstaedt, Wide Open Services, Prosser, and Maxim.

In May 2017, Maxim brought an eviction action against Mittelstaedt and another of his companies, Iron Range Repair. Mittelstaedt and Iron Range Repair responded with a suit against Henney, Prosser, and Maxim, alleging, among other things, fraud, breach of fiduciary duties, and breach of contract. The claims against Henney centered on Mittelstaedt's allegation that (at the time of the transactions described here) Henney was acting as his attorney and that Henney did not disclose to Mittelstaedt that Henney was a

part-owner of Maxim. Because he believed that Henney was his attorney, Mittelstaedt claimed he did not closely scrutinize the documents that Henney drafted, which left Mittelstaedt at a disadvantage.

Henney moved for summary judgment on the breach-of-fiduciary-duty claim against him, for dismissal for failure to plead with particularity or summary judgment on the fraud claims, and for judgment on the pleadings. The district court granted Henney's motions, dismissing Mittelstaedt's breach-of-fiduciary-duty and fraud claims against Henney. Mittelstaedt appealed.

We held that the expert-affidavit requirements under Minnesota Statutes section 544.42 apply to claims against a plaintiff's attorney, regardless of whether the claim was framed as a breach of fiduciary duty or attorney malpractice. *Mittelstaedt v. Henney*, 954 N.W.2d 852, 863 (Minn. App. 2021) (*Mittelstaedt I*). Because Mittelstaedt raised an issue of attorney malpractice at the district court level but did not comply with the expert-affidavit requirement, we affirmed summary judgment on Mittelstaedt's breach-of-fiduciary-duty claim against Henney. *Id.* Mittelstaedt filed, and the Minnesota Supreme Court granted, a petition for further review.

The Minnesota Supreme Court—narrowly reviewing the application of section 544.42—reversed and remanded. It explained that we erred by not applying the “ordinary case-by-case analysis” to determine that expert-affidavits were required, stating

In this case, the district court, which is to make the initial determination whether expert affidavits are required in a particular case, did not address the issue. Even if it had, it would not have had the benefit of our opinion on the subject. Instead, the district court decided the summary-judgment

motion on its merits. On remand, the court of appeals should consider the other grounds raised on appeal, specifically whether the district court's ruling on the merits of the summary judgment motion was erroneous. If the court of appeals concludes summary judgment was proper without reaching the expert affidavit issue, the case will be concluded. But if the court of appeals holds that summary judgment was not proper, the case will be remanded to the district court for further proceedings, including a decision as to whether an expert affidavit is necessary in this case.

Mittelstaedt v. Henney, 969 N.W.2d 634, 641 (Minn. 2022) (*Mittelstaedt II*). In a footnote, the supreme court also clarified that *Colstad v. Levine*, 67 N.W.2d 648 (1954), requires an attorney accused of a fiduciary breach to bear the burden of proof. *Mittelstaedt II*, 969 N.W.2d at 641 n.3.

DECISION

The issue before us is whether the district court's grant of summary judgment on the merits of Mittelstaedt's breach-of-fiduciary-duty claim was appropriate or if, given Henney's burden of proof, there is a fact dispute precluding summary judgment.¹ We review a grant of summary judgment de novo. *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019).

¹ On initial appeal, Mittelstaedt challenged several of the district court's factual findings made during a court trial on claims that survived summary judgment. *Mittelstaedt I*, 954 N.W.2d at 863-64. These findings included (1) his failure to maintain corporate formalities, (2) the joint venture start date, (3) whether there were any preconditions to the lease agreements, (4) whether Mittelstaedt had unclean hands, and (5) the district court's damages calculation. *Id.* Some arguments before us on remand strayed into questioning the legitimacy of these findings. But we concluded in *Mittelstaedt I* that all of these findings were supported by the record and that Mittelstaedt did not demonstrate prejudice. These conclusions are final. These issues were not before the Minnesota Supreme Court and are not before us now.

This challenge to the district court's grant of summary judgment is based on the principles of fiduciary duties. The Minnesota Supreme Court discussed such a duty between a former attorney and their client in *Colstad*, where the parties were involved in a property dispute. 67 N.W.2d at 651. While it was unclear whether an attorney-client relationship still existed between the parties at the time of the transaction, the supreme court emphasized that the attorney has the burden of proving that they have "been absolutely frank and fair with [their] client," particularly because the fiduciary duty does not necessarily cease when a professional relationship is terminated. *Id.* at 654-55.

Here, the district court, when granting summary judgment in favor of Henney, placed the burden of proof on Mittelstaedt. The district court explained that Mittelstaedt failed to offer evidence sufficient to show that Henney took "unfair advantage" of their relationship or that their business dealings were unfair to him. After stating that Mittelstaedt did demonstrate there was a fact question regarding Henney and Mittelstaedt's attorney-client relationship, the district court concluded that

Plaintiffs, however, have failed to provide any material evidence that Defendant Henney took unfair advantage of that professional relationship or that the terms of the overall business dealings among the parties were unfair to Plaintiffs. It is undisputed that Plaintiff [Mittelstaedt] was represented by separate counsel throughout the time of the purchase of the property by Defendant Maxim Management from Beacon and at the time of the signing of the first lease. Since the only damages Plaintiffs claim from the alleged breach of fiduciary duty is that Plaintiffs wanted to preserve the option to buy in the earlier Beacon lease and the first lease in fact contained such a clause, Plaintiffs have failed to provide a factual basis for their claim against Defendant Henney.

But the Minnesota Supreme Court concluded that the burden of proof ultimately resides with the attorney accused of a breach of fiduciary duty, and explained in a footnote that

Colstad remains good law and is consistent with this opinion. Requiring plaintiffs to produce affidavits at the outset of litigation to show a prima facie case neither changes nor contradicts *the attorney's ultimate burden to prove that they discharged their duties appropriately.* See Minn. Stat. § 544.42, subd. 2(1)-(2).

Mittelstaedt II, 969 N.W.2d at 641 n.3 (emphasis added).

Contrary to this subsequent explanation of *Colstad*, the district court here did not require Henney to prove that he discharged his duties appropriately to Mittelstaedt. In light of the supreme court's footnote clarifying *Colstad*, we conclude that the district court improperly shifted the burden of proof to Mittelstaedt.

Because the district court erroneously placed the burden of proof on Mittelstaedt to prove Henney was frank and fair with him, the district court erred when granting summary judgment.² Accordingly, on remand, the district court must first decide whether an expert affidavit is necessary in this case. See *Mittelstaedt II*, 969 N.W.2d at 640 (stating “whether [section 544.42] applies to a case is a threshold issue for the district court to decide by examining each element of the prima facie case of malpractice”) (quotation omitted)). If the matter is not dismissed on the expert affidavit issue, the district court may reconsider

² Because we conclude the district court erred in granting summary judgment, we do not need to reach Mittelstaedt's other summary-judgment-related assertions that the district court violated the principle of party presentation or that there were genuine issues of material fact pertaining to Henney's relationship with Mittelstaedt.

the summary judgment motion in light of the *Colstad* decision and hold further proceedings consistent with *Mittelstaedt I* and *II*.

Reversed and remanded.