

*This opinion is nonprecedential except as provided by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
A21-0432**

1648 Properties, LLC, et al.,
Appellants,

vs.

Morrisun Sund, PLLC,
Respondent,

KAW Parks, LLC,
Respondent.

**Filed January 10, 2022
Affirmed in part, reversed in part, and remanded
Slieter, Judge**

Sherburne County District Court
File No. 71-CV-20-1114

John A. Cotter, Nic S. Puechner, Larkin Hoffman Daly & Lindgren, Ltd., Minneapolis, Minnesota; and

Daniel S. Bernheim (pro hac vice), Wilentz Goldman & Spitzer, P.A., Philadelphia, Pennsylvania (for appellants)

Eric G. Nasstrom, Ryan R. Dreyer, Morrison Sund PLLC, Minnetonka, Minnesota (for respondent Morrison Sund)

Scott D. Blake, Lauren M. Weber, Felhaber Larson, Minneapolis, Minnesota (for respondent KAW Parks)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellants 1648 Properties, LLC and Henry Stursberg (1648 Properties) obtained a court order that required respondent Morrison Sund, PLLC¹ to release an attorney lien on property that had a pending property sale. Because Morrison Sund did not initially comply with the order to release the attorney lien, 1648 Properties moved the district court to hold Morrison Sund in contempt for its delay. Morrison Sund subsequently released the attorney lien, and 1648 Properties deposited an amount equivalent to the lien amount with the district court.

1648 Properties claims the district court erred by (1) ruling the attorney lien issues, which include 1648 Properties' contempt motion, moot; (2) retaining the funds for disbursement as determined by related litigation; and (3) *sua sponte* granting summary judgment in favor of Morrison Sund on its breach of contract counterclaim.

The district court properly concluded attorney lien issues were moot and properly exercised its discretion to order the deposited funds to be held and disbursed as determined in the related litigation. However, because the district court abused its discretion in *sua sponte* granting Morrison Sund summary judgment on its counterclaim, we affirm in part, reverse in part, and remand.

¹ The case caption in the district court identified respondent as "Morrison" Sund. Respondent identifies itself as "Morrison" Sund in its appellate brief. The caption of this opinion conforms with the caption used in the district court. *See* Minn. R. Civ. App. P. 143.01. This opinion uses the spelling respondent provides.

FACTS

1648 Properties brought an action against Morrison Sund on October 16, 2020, seeking in part, an order requiring Morrison Sund to remove its notice of attorney lien on property utilized as a mobile home park to which 1648 Properties possessed an interest and which had a sale pending. Morrison Sund had represented 1648 Properties pursuant to a retainer agreement from March 2019 to November 2019 in related litigation regarding ownership of two mobile home parks, upon one of which (the property) Morrison Sund recorded the \$199,339.33 attorney lien.

The property was sold at a sheriff's foreclosure sale on December 4, 2019, triggering a one-year statutory redemption period. In September 2020, the related litigation was resolved by a settlement agreement between 1648 Properties and the other parties to that litigation, including respondent-intervenor KAW Parks, LLC. The following month, 1648 Properties commenced this action and Morrison Sund answered, alleging various counterclaims, including breach of the attorney retainer agreement.

Because a pending sale of the property needed to close before the December 4, 2020 statutory redemption period deadline, the district court ordered the following on November 20:

1. [Morrison Sund] shall discharge their Attorney's lien on [the property].
2. In exchange, [1648 Properties] shall ensure that \$199,339.33 is placed into escrow with the Clerk of Sherburne County District Court from the proceeds of any sale of the Property.

Morrison Sund delayed releasing the lien because it believed it was entitled to an additional amount involving collection costs beyond the amount identified by the notice of attorney lien. After Morrison Sund reached an agreement with KAW Parks and other involved entities to recover the full lien amount and part of its claimed collection costs, it released the attorney lien on November 27 and delivered the release to KAW Parks before closing. The sale closed on December 1. On December 2 and in compliance with the November 20 order, 1648 Properties deposited \$199,339.99 with the district court.

Because Morrison Sund failed to immediately release its attorney lien following the November 20 order, 1648 Properties moved for a district court order finding Morrison Sund in contempt. The district court considered 1648 Properties' contempt motion on December 17. It issued an order on March 16 that: (1) concluded that issues regarding the validity and amount of Morrison Sund's attorney lien were moot and, therefore, that 1648 Properties' contempt motion was moot; (2) retained the deposited funds to be disbursed pursuant to the settlement agreement resolving the related litigation; and (3) granted summary judgment for Morrison Sund on its breach-of-contract counterclaim. This appeal follows.

DECISION

- I. The district court properly concluded that all attorney lien related issues are moot, and the district court was within its discretion to hold the deposited funds.**

Throughout this litigation, 1648 Properties' primary goal has been removal of Morrison Sund's attorney lien in order to clear the way for the property to be sold. Because the district court found, following the December 17 hearing, that Morrison Sund had

removed its attorney lien and the property had been sold, 1648 Properties' cause of action, which seeks removal of the attorney lien, and its subsequent contempt motion regarding the attorney lien, are moot. The record supports the district court's conclusion. The district court properly exercised its discretion to require the deposited funds continue to be held by the district court and pending resolution in the related litigation.

Attorney Lien Claim

1648 Properties does not argue in its principal brief that the attorney lien issue is not moot. Therefore, 1648 Properties has forfeited this issue. *Ward v. El Rancho Manana, Inc.*, 945 N.W.2d 439, 448-49 (Minn. App. 2020), *rev. denied* (Minn. Sept. 29, 2020). However, even if the issue had not been forfeited, the record supports the district court's mootness conclusion.

Mootness presents a question of justiciability, which is an issue of law we review *de novo*. See *Dean v. City of Winona*, 868 N.W.2d 1, 4 (Minn. 2015). "The mootness doctrine is not a mechanical rule that is automatically invoked whenever the underlying dispute between the parties is settled or otherwise resolved. Rather, it is a flexible discretionary doctrine." *Id.* (quotation and citation omitted). An issue is moot if the court is not able to grant effective relief. *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989).

Morrison Sund released the attorney lien prior to the mobile home park sale closing. Therefore, as of the December 17 hearing, the district court correctly concluded that, "[b]ecause the lien no longer exist[ed], the Court cannot grant [1648 Properties]'s requested relief. This issue is moot."

Contempt

We look to the district court's purpose when determining whether a contempt is remedial or punitive. *State v. Martin*, 555 N.W.2d 899, 900 (Minn. 1996). For remedial contempt, "the only objective is to secure compliance with an order presumed to be reasonable." *Newstrand v. Arend*, 869 N.W.2d 681, 692 (Minn. App. 2015) (quoting *Hopp v. Hopp*, 156 N.W.2d 212, 216 (Minn. 1968)), *rev. denied* (Minn. Dec. 15, 2015).

1648 Properties asked the district court to compel Morrison Sund to release the attorney lien and pay 1648 Properties' reasonable fees. The district court interpreted this as a request for remedial sanctions and determined that 1648 Properties' request to find Morrison Sund in contempt was moot because "nothing remain[ed] in the 11/20 Order with which Morrison need comply." Because Morrison Sund had released its attorney lien, contempt would serve no remedial purpose. The district court properly concluded the contempt remedy is moot.

Deposited Funds

We review a district court's handling of funds on deposit for abuse of discretion. *See Ed Herman & Sons v. Russell*, 535 N.W.2d 803, 808 (Minn. 1995) (concluding the district court acted within its discretion in taking funds on deposit for "extra-judicial" reasons). The November 20 order directed that 1648 Properties deposit \$199,339.33, which was to "be distributed to *the appropriate party*" following adjudication of Morrison Sund's claim for fees. Contrary to 1648 Properties' characterization, the district court did not "transfer" the funds by its March 16 order but ordered that "[t]he escrowed funds shall

remain in escrow, to be disbursed” pursuant to a settlement agreement in the related litigation. The record supports this decision of the district court.

1648 Properties and KAW Parks entered a settlement agreement in the related litigation regarding ownership of the property in September 2020. This agreement allowed KAW Parks “to pay any amount required to remove the Morrison Sund Liens” if 1648 Properties had not obtained their removal at or before closing. Additionally, the agreement required the parties to submit “any and all disputes arising out of this Agreement” to the district court judge who presided over the related litigation for “final resolution” with “no . . . right to appeal any decision or order.”

The district court in the order now on appeal found that KAW Parks had a potential contractual right to the deposited funds pursuant to the settlement agreement. Because the presiding judge in the related litigation was identified by all the parties as the sole interpreter of the settlement agreement, the district court concluded the deposited funds should be held pending that judge’s determination of KAW Parks’ contractual rights. Because the settlement agreement governed whether KAW Parks had a right to reimbursement from 1648 Properties and KAW Parks was properly a party through intervention in the attorney lien litigation, the district court exercised proper discretion in holding the funds pending determination of KAW Parks’ contractual rights.²

² Following issuance of the March 16 order now on appeal, the presiding judge in the related litigation ordered the deposited funds released to KAW Parks.

II. The district court abused its discretion by *sua sponte* granting Morrison Sund summary judgment.

We review summary judgments *de novo*. See *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020). Where the parties do not allege procedural irregularities, we apply the typical summary judgment standards when the district court *sua sponte* grants summary judgment. See *Septran, Inc. v. Indep. Sch. Dist. No. 271, Bloomington, Minn.*, 555 N.W.2d 915, 920 (Minn. App. 1996), *rev. denied* (Minn. Feb. 26, 1997). However, when procedural irregularities may have denied the party opposing summary judgment a meaningful opportunity to be heard, we apply an abuse of discretion standard. *Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 419-20 (Minn. App. 2003).

Parties may move for summary judgment, in whole or in part, and the district court “shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. A district court may also “[a]fter giving notice and a reasonable time to respond . . . consider summary judgment on its own initiative after identifying for the parties the material facts that may not be genuinely in dispute.” Minn. R. Civ. P. 56.06 (emphasis added).

District courts have the inherent power to grant summary judgment when “(a) no genuine issues of material fact remain, (b) one of the parties deserves judgment as a matter of law, and (c) the absence of a formal motion creates no prejudice to the party against whom summary judgment is granted.” *Hebrink*, 664 N.W.2d at 419. We will not uphold

a *sua sponte* grant of summary judgment if a party can show that the court's exercise of its inherent power "resulted in 'prejudice from lack of notice or other procedural irregularities,' or that the party 'was not afforded a meaningful opportunity to oppose summary judgment.'" *Phelps v. State*, 823 N.W.2d 891, 894 (Minn. App. 2012) (quoting *Fed. Land Bank of St. Paul v. Obermoller*, 429 N.W.2d 251, 255 (Minn. App. 1988), *rev. denied* (Minn. Oct. 26, 1988)). "Prejudice is unavoidable when a trial court denies any opportunity to marshal evidence in opposition to a basis for summary judgment raised *sua sponte*." *Hebrink*, 664 N.W.2d at 419 (quotation omitted).

We have upheld a district court's *sua sponte* entry of summary judgment where the aggrieved party had notice that summary judgment was a possible outcome of the hearing and had an opportunity to present arguments and evidence to oppose summary judgment. *Fed. Land Bank of St. Paul*, 429 N.W.2d at 255-56 (concluding *sua sponte* grant of summary judgment was proper where notice rules were not strictly followed but both sides presented affidavits and arguments regarding summary judgment); *see also Del Hays & Sons, Inc. v. Mitchell*, 230 N.W.2d 588, 590, 592 (Minn. 1975) (upholding *sua sponte* grant of summary judgment where the district court notified the parties of a possible dispositive defense and offered an opportunity to present evidence to counter the defense). In contrast, we have reversed a district court's exercise of its inherent power to grant summary judgment when an aggrieved party had no notice of possible summary judgment. *Hebrink*, 664 N.W.2d at 419 ("[H]ere, there is no evidence in the record that indicates appellant knew on the day of trial that he was expected to address a potential summary-

judgment motion”); *Phelps*, 823 N.W.2d at 895 (“[A]ppellants were without adequate notice that the district court was considering summary judgment.”).

Unlike the cases upholding a *sua sponte* grant of summary judgment, 1648 Properties had no notice that the district court would consider summary judgment and did not, therefore, have an opportunity to respond. And because “[p]rejudice is unavoidable when a trial court denies any opportunity to marshal evidence in opposition to a basis for summary judgment raised *sua sponte*,” *Hebrink*, 664 N.W.2d at 419 (quotation omitted), we reverse the district court’s summary judgment on Morrison Sund’s breach of contract counterclaim and remand to the district court for further proceedings.

Affirmed in part, reversed in part, and remanded.