STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1638

Joseph Roach, et al.,
Appellants,

vs.

Thomas Alinder, et al.,
Respondents,
Gary Heitkamp Construction, Inc., et al.,
Respondents.

Filed July 18, 2022
Affirmed
Reyes, Judge

Becker County District Court
File No. 03-C5-05-000667

Denis E. Grande, Zachary P. Armstrong, DeWITT, L.L.P., Minneapolis, Minnesota (for appellants)

Steven F. Lamb, Vogel Law Firm, Fargo, North Dakota (for respondents Thomas Alinder, et al.)

Michael J. Morley, Victoria A. Vold, Morley Law Firm, Ltd., Grand Forks, North Dakota (for respondents Gary Heitkamp Construction, et al.)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellants Joseph and Jennifer Roach (the Roaches) argue that the district court erred by denying their motion to reallocate Becker County's (the county) share of fault to jointly and severally liable respondents Thomas and Sandra Alinder (the Alinders) and Gary Heitkamp and Gary Heitkamp Construction Inc. (Heitkamp) (collectively, respondents). Because we agree with the district court that the Roaches filed an untimely motion under Minn. Stat. § 604.02, subd. 2 (2020), we affirm.

FACTS

The current appeal is the sixth time this case has come before this court. The facts underlying the dispute are described at length in our previous opinions.[1] In short, the Roaches and the Alinders own adjacent lakefront properties in the county. The Alinders' property was initially at a lower elevation than the Roaches' property. In 2003, the Alinders obtained a permit to build a new house on their property and contracted with Heitkamp to build the house. As part of the construction project, respondents added fill to

[1] *In re Decision of Becker Cty. Zoning Adm'r*, No. A07-1580, 2008 WL 4224508 (Minn. App. Sept. 16, 2008) (*Roach I*); *Roach v. County of Becker*, No. A12-0132, 2012 WL 6097133 (Minn. App. Dec. 10, 2012) (*Roach II*), *rev. denied* (Minn. Feb. 19, 2013); *Roach v. County of Becker*, No. A16-0915, 2017 WL 1316117 (Minn. App. Apr. 10, 2017) (*Roach III*); *Roach v. County of Becker*, No. A19-2083, 2020 WL 4281003 (Minn. App. July 27, 2020) (*Roach IV*), *aff'd in part and rev'd in part*, 962 N.W.2d 313 (Minn. 2021); and *Roach v. County of Becker*, No. A20-0739, 2021 WL 318003 (Minn. App. Feb. 1, 2021) (*Roach V*), *rev. granted* (Minn. Apr. 28, 2021) *and order granting rev. vacated* (Minn. Aug. 24, 2021).

the Alinders' property, which changed the elevation and caused water to run off onto the Roaches' property.

After years of litigation with the county and respondents, the Roaches obtained a restoration order from the district court requiring respondents to remove enough fill to restore the Alinders' property to its preconstruction elevation. The parties also proceeded to trial on damages. Before the trial began, the district court dismissed the county as a party due to governmental immunity.

In April 2019, the district court held a jury trial to determine damages. Although the county had been dismissed as a party, Heitkamp asked the district court to include the county on the jury's special-verdict form for apportionment of liability. Over the Roaches' objection, the district court included the county on the special-verdict form. The jury awarded the Roaches $260,000 in past damages and $300,000 in future damages, apportioning 20% of fault to the county, 40% to the Alinders, and 40% to Heitkamp.

Respondents moved for a new trial, contesting the jury's damages award. The Roaches moved for judgment as a matter of law (JMOL) on the 20% of fault apportioned to the county, arguing that the county owed no duty and that the evidence did not support a finding of negligence by the county. The Roaches also moved for preverdict interest, attorney fees, leave to amend the complaint to add a claim for punitive damages, and a civil contempt order against respondents.

The district court granted some of the Roaches' requested preverdict interest but denied their motions for attorney fees, punitive damages, civil contempt, and JMOL as to the county's fault. The district court conditionally granted respondents' motion for a new

trial unless the Roaches agreed to a remittitur reducing the future damages award to $0 and reducing the costs-and-disbursements award. The Roaches accepted the remittitur.

The district court filed the amended final order for judgment on October 24, 2019, and entered judgment on October 28, 2019. The district court made the following calculation of the final award to the Roaches, multiplying the damages award by 80% to account for the jury's attribution of 20% of fault to the county:

Damage to Lake Lot ($10,000 * 80%):	$8,000.00
Damage to Cabin ($200,000 * 80%):	$160,000.00
Nuisance Damages ($50,000 * 80%):	$40,000.00
Trespass Damages (against Heitkamp):	$4,800.00
Costs and Disbursements:	$74,574.20
Preverdict Interest:	$227,511.57

The district court also found that respondents were jointly and severally liable under Minn. Stat. § 604.02, subd. 1(2) (2020).

The Roaches appealed the amended final judgment. *See Roach IV*, 2020 WL 4281003. Relevant to this appeal, the Roaches challenged the district court's posttrial denial of their motion for JMOL on the county's fault. They also challenged the district court's preverdict interest calculation and its denial of their motions for attorney fees, punitive damages, and civil contempt. *Id.* at *1. Respondents argued on appeal that the Roaches waived their right to appeal all issues by accepting the remittitur. *Id.*

In an opinion filed July 27, 2020, we concluded that the Roaches did not waive their right to appeal all issues by accepting a remittitur on future damages. *Id.* at *2-3. We then affirmed the district court's denial of the Roaches' motions for JMOL as to the county's

fault, punitive damages, and civil contempt. *Id.* at *4-8. But we reversed the district court's calculation of preverdict interest and its denial of attorney fees. *Id.* at *4, *7.

The Minnesota Supreme Court granted respondents' petition for review on two issues: (1) whether the Roaches' acceptance of the remittitur precluded the Roaches' appeal and (2) whether attorney fees were authorized under the Minnesota watershed law. *Roach IV*, 962 N.W.2d at 318. The Roaches did not petition for review of our affirmance of the district court's denial of JMOL on the county's fault.

While *Roach IV* was on appeal, the parties continued to litigate over payment of the 2019 judgment and postjudgment interest. Respondents moved to deposit the amount of the judgment against them and asked the district court to accept the deposit and halt the accrual of postjudgment interest. The district court granted respondents' motion and ordered that, upon deposit, postjudgment interest would cease accruing as of the date the Roaches filed their initial appeal.

The Roaches again appealed, arguing that the district court erred by halting accrual of postjudgment interest. *Roach V*, 2021 WL 318003, at *2. We agreed with the Roaches. *Id.* at *4-6. Respondents petitioned the supreme court for review of that decision. On April 28, 2021, the supreme court granted review and stayed further proceedings in *Roach V* pending its final decision in *Roach IV*.

The supreme court issued its decision in *Roach IV* on July 21, 2021, affirming in part and reversing in part. 962 N.W.2d at 315. The supreme court held that acceptance of a remittitur does not bar an appeal raising issues separate and distinct from the remittitur order, and, after concluding that the attorney-fee and preverdict-interest issues were

separate and distinct from the remittitur, it affirmed our decision on preverdict interest but reversed our decision on attorney fees. *Id.* at 322-28.

On August 13, 2021, the Roaches moved the district court to amend the October 28, 2019 judgment with updated preverdict and postverdict-prejudgment interest based on instructions issued by this court in *Roach IV*. Shortly after, on August 24, 2021, the supreme court vacated its grant of review in *Roach V*. Two days later, on August 26, 2021, the Roaches moved the district court to amend the October 28, 2019 judgment to include postjudgment interest based on our decision in *Roach V*.

That same day, August 26, 2021, the Roaches also moved to reallocate the county's 20% share of the damages award to respondents under Minn. Stat. § 604.02, subd. 2.

On October 11, 2021, the district court granted the Roaches' motion for amended judgment to adjust the interest award based on our decisions in *Roach IV* and *Roach V*. But it denied the Roaches' motion for reallocation as untimely. It also determined that, even if they had filed a timely motion, the judgment did not include an amount for the county's percentage of fault, so there was no amount of the judgment to reallocate, and that section 604.02, subdivision 2, did not apply because the county was immune and therefore not severally liable. This appeal follows.

DECISION

Because the Roaches moved for reallocation more than one year after the district court entered judgment, the Roaches filed an untimely reallocation motion under section 604.02, subdivision 2.

The Roaches argue that they moved for reallocation within the statutory time limit because they filed their motion within one year of the supreme court's remand following *Roach IV* and *Roach V*. We disagree.

The parties' dispute requires us to interpret and apply section 604.02, subdivision 2. Statutory interpretation is a question of law, which we review de novo. *See Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). We also review de novo the "[a]pplication of a statute to the undisputed facts of a case." *In re Est. of Rutt*, 824 N.W.2d 641, 645 (Minn. App. 2012) (quotation omitted). When interpreting a statute, we first determine whether the statute is ambiguous. *See Peterson v. City of Minneapolis*, 892 N.W.2d 824, 827 (Minn. 2017). A statute is ambiguous when "it is susceptible to more than one reasonable interpretation." *A.A.A. v. Minn. Dep't of Hum. Servs.*, 832 N.W.2d 816, 819 (Minn. 2013) (citation omitted). If the statute's meaning is clear and unambiguous, then the plain language of the statute controls. *328 Barry Ave., LLC v. Nolan Props. Grp., LLC*, 871 N.W.2d 745, 749 (Minn. 2015).

Section 604.02, subdivision 2, states, "*Upon motion made not later than one year after judgment is entered*, the court shall determine whether all or a part of a party's equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties." (Emphasis added.) Neither party argues that section 604.02, subdivision 2, is ambiguous. Instead, they disagree as to its

application. We conclude that the statute is unambiguous. By its plain language, the statute applies to the final judgment entered by the district court after damages and the parties' shares of fault have been determined. And, significantly, a party must move to reallocate an uncollectible share of a party's obligation "not later than one year after" that judgment is entered. An appeal from the judgment does not, by itself, automatically suspend that statutory one-year deadline. *Cf. Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 221 (Minn. 2007) (reaffirming that judgment becomes final when it is entered in district court and remains final despite pending appeal).

Here, the district court entered its amended final judgment on October 28, 2019. Under the plain language of the statute, the Roaches had to move for reallocation by October 28, 2020. But the Roaches did not file their reallocation motion until August 2021, almost two years after the district court entered judgment.

The Roaches nevertheless argue that a motion to reallocate is timely when it is brought within one year of an appellate court's decision remanding a case for further proceedings, citing *Hosley v. Pittsburg Corning Corp.*, 401 N.W.2d 136, 139 (Minn. App. 1987) (*Hosley II*), and *Swanson v. Chorney*, No. C4-97-1421, 1998 WL 27297, at *2 (Minn. App. Jan. 27, 1998). We are not persuaded. First, the Roaches' interpretation contradicts the plain language of the statute. Second, *Hosley II* and *Swanson* are distinguishable. In *Hosley II*, the parties argued on appeal over the apportionment of damages and whether the reallocation statute applied, and the district court had specifically imposed a stay of enforcement on a portion of the damages. 401 N.W.2d at 139. Here, this court in *Roach IV* decided the only issue raised on appeal potentially affecting the

county's share of fault, and the district court never ordered a stay of the judgment that could have precluded the Roaches from seeking reallocation of the county's share.[2]

Swanson is nonprecedential and nonbinding, *see* Minn. R. Civ. App. P. 136.01, subd. 1(c), and similarly distinguishable. In *Swanson*, the appellant filed a supersedeas bond, which resulted in a stay of "all further proceedings . . . upon the judgment" at the district court. 1998 WL 27297, at *2. We therefore applied the rationale of *Hosley II* to avoid "requiring a judgment debtor to choose between appealing from a judgment and moving for reallocation." *Id.* But this case does not involve a supersedeas bond or an equivalent stay of the judgment that could have affected the district court's ability to consider a motion for reallocation during the parties' *Roach IV* appeal.

The Roaches argue that the district court effectively imposed a stay because, in granting respondents' motion to deposit the judgment amount, the district court ordered that "[a]fter deposit, the funds shall not be subject to a levy of execution or garnishment on judgment pending the decision from the Court of Appeals." But, by its own terms, that order only affected the Roaches' ability to withdraw the deposited funds pending appeal; it did not preclude the Roaches from moving for reallocation of the county's uncollectible share, which had never been included in the amended final judgment.

The Roaches also cite to the *Staab* line of decisions to argue that a motion to reallocate is timely when it is filed within a year of appellate remand. *See Staab v. Diocese*

[2] Even if we were to assume that the Roaches' appeal tolled the statutory deadline for their reallocation motion, we decided the only issue on appeal regarding the county's fault in *Roach IV*, 2020 WL 4281003, at *4-5, on July 27, 2020. The Roaches did not move to reallocate until more than a year later, in August 2021.

of St. Cloud, 813 N.W.2d 68 (Minn. 2012) (*Staab I*); *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713 (Minn. 2014) (*Staab II*). But the *Staab* decisions do not explicitly address timeliness. More importantly, in the *Staab* cases, there was nothing to reallocate *until* remand, because the district court initially entered judgment for the *entire* damage award against the defendant. *See Staab II*, 853 N.W.2d at 715-16. After the supreme court held that the defendant could only be required to contribute 50% of the award and remanded to the district court, the plaintiff then moved to reallocate the remaining 50% of the award back to the defendant. *Id.* Here, the district court *never* included the county's 20% share of the damages award in its October 28, 2019 amended final judgment.

Finally, the Roaches argue that, under Minn. R. Civ. App. P. 108.01, subd. 2, the district court lacked jurisdiction to decide a motion to reallocate while the judgment was on appeal in *Roach IV* and *Roach V*. Again, we disagree. Although the filing of an appeal "suspends the [district] court's authority to make any order that affects the . . . judgment appealed from," the district court "retains jurisdiction as to matters independent of, supplemental to, or collateral to" that judgment. Minn. R. Civ. App. P. 108.01, subd. 2. Collateral matters are "independent of the underlying decision and do not seek to modify the underlying decision" on the merits. *Kellar v. Von Holtum*, 605 N.W.2d 696, 700 (Minn. 2000). Motions for attorney fees, costs and disbursements, and preverdict interest are considered collateral matters. *Spaeth v. City of Plymouth*, 344 N.W.2d 815, 824-25 (Minn. 1984) (holding that attorney fees are collateral); *City of Waite Park v. Minn. Off. of Admin. Hearings*, 758 N.W.2d 347, 354 (Minn. App. 2008) (characterizing motion for costs and disbursements as collateral); *Fette v. Peterson*, 406 N.W.2d 594, 597 (Minn. App. 1987)

(holding that prejudgment interest is collateral to decision on merits), *rev. denied* (Minn. June 30, 1987). Enforcement of the judgment is also a collateral matter. *David N. Volkmann Const., Inc. v. Isaacs*, 428 N.W.2d 875, 876-77 (Minn. App. 1988).

We conclude that, here, the Roaches' motion to reallocate was collateral to the final amended judgment. The Roaches moved to reallocate the county's 20% share, which the district court did not include in the amended final judgment. The Roaches' motion therefore did not ask the district court to reconsider or modify the underlying judgment on its merits. Rather, it required the district court to determine if the Roaches were entitled to an *additional* amount because the county's share of the already-decided obligation was uncollectible and subject to reallocation under section 604.02, subdivision 2. Whether the Roaches were entitled to reallocation of the county's share was therefore a collateral matter over which the district court retained jurisdiction pending the parties' appeals.

In sum, because there was no stay of the judgment pending appeal that affected the Roaches' ability to move timely for reallocation, and because the Roaches did not file their motion until August 2021, we conclude that the Roaches did not move for reallocation within a year after the district court entered judgment as required by section 604.02, subdivision 2.[3] They therefore filed an untimely motion, and the district court did not err

[3] The Roaches also argue in their reply brief that they filed a timely motion because they filed it within a year after the district court entered its *postappeal* amended judgment on October 11, 2021. We do not consider arguments not raised in an appellant's principal brief and raised for the first time in a reply brief. *See Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010). Because the Roaches did not raise this argument in their principal brief, we do not consider it.

by denying it. Because we conclude that the Roaches' filed an untimely reallocation motion, we do not address the merits of their motion.

Affirmed.