STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1665

Michael Bartell,
Respondent,

vs.

Tara Mutual Fire Insurance Company,
Appellant,

Donnelly Agency, Inc.,
Respondent.

Filed June 27, 2022
Affirmed in part, reversed in part, and remanded
Reilly, Judge

Douglas County District Court
File No. 21-CV-20-1531

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Considered and decided by Worke, Presiding Judge; Reilly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this dispute arising from insurance coverage for a grain dryer damaged in a fire, appellant-insurer challenges the district court's grants of summary judgment to respondent-insured and respondent-agent, as well as the district court's denial of summary judgment in favor of appellant-insurer. We conclude that genuine issues of material fact preclude summary judgment. Thus, we affirm the district court's decision to deny appellant-insurer's summary-judgment motion against respondent-insured. We conclude that the district court erred by granting respondent-insured's summary-judgment motion against appellant-insurer for reformation of the contract, and we reverse and remand. Lastly, we conclude that the district court erred by granting respondent-agent's summary-judgment motion against appellant-insurer, and we reverse and remand.

FACTS

In 2016, respondent-insured Michael Bartell inherited farm property and equipment. Bartell approached respondent-insurance agency, Donnelly Agency Inc. (Donnelly), to discuss his insurance needs. Donnelly has an agency contract with appellant-insurer Tara Mutual Insurance Company (Tara Mutual), which sells insurance products in Minnesota.

Between October 2016 and May 2017, Bartell spoke with Donnelly's insurance agent (the agent) about his future insurance needs for the farm, vehicles, and farm equipment. Bartell compiled a list of the property he wanted insured, including a 2009 Grain Handler Model 2410 Grain Dryer (the grain dryer). In March 2017, Bartell provided the agent with an appraisal document containing a description and appraised value of each

item, including the grain dryer. Bartell told the agent he wanted coverage for everything listed on the appraisal document. The agent agreed to bind coverage for the property and equipment listed in the appraisal document.

In June 2017, the agent sent a letter to Tara Mutual stating, "Effective 06/06/17 please add on the dwelling, outbuilding and bins as per the attached Delaware policy to the above referenced insured's policy." Bartell once had a policy with Delaware Mutual Insurance Company and the agent "went off the Delaware policy." The agent could not remember how she acquired the Delaware Mutual policy. In any event, the grain dryer was not included on that list.

In November 2018, the grain dryer was damaged in a fire. Bartell reported the damage to the agent, and she agreed to open a claim on the damaged item. Bartell submitted a claim for the grain dryer to Tara Mutual. Tara Mutual denied the claim because Bartell did not have coverage for the grain dryer. Donnelly conceded that it failed to include the grain dryer on Bartell's insurance policy. Donnelly's liability carrier agreed to pay Bartell for his loss. Bartell entered into a loan receipt agreement with the liability carrier permitting the liability carrier, through Bartell, to sue Tara Mutual to reform the insurance policy to include the grain dryer.

In October 2019, Bartell filed a complaint seeking reformation of the contract and monetary damages. Bartell alleged that the agent, as an authorized agent of Tara Mutual, agreed to bind coverage for the value of the grain dryer and that he relied on the agent to prepare the insurance policy. Tara Mutual filed a third-party complaint against Donnelly for indemnification. Donnelly moved for summary judgment to dismiss Tara Mutual's

third-party complaint. Bartell also moved for summary judgment and sought to have the insurance policy equitably reformed to provide coverage for the grain dryer. Tara Mutual opposed these motions and cross-moved for summary judgment. Following a hearing, the district court granted Bartell's motion, reformed the insurance policy to include coverage for the grain dryer, and ordered Tara Mutual to pay damages. Based on this ruling, the district court denied Tara Mutual's summary-judgment motion against Bartell. The district court also granted Donnelly's summary-judgment motion against Tara Mutual and dismissed Tara Mutual's third-party complaint against Donnelly.

Tara Mutual now appeals.

DECISION

Summary judgment is appropriate if "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 genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party." *Leeco, Inc. v. Cornerstone Bank*, 898 N.W.2d 653, 657 (Minn. App. 2017), *rev. denied* (Minn. Sept. 27, 2017). A material fact is one that will affect the outcome or result of a case. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). We review a grant of summary judgment de novo, viewing "the evidence in the light most favorable to the nonmoving party and resolv[ing] all doubts and factual inferences against the moving part[y]." *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 874 (Minn. 2019) (quotation omitted).

I. The district court erred by granting Bartell's motion for summary judgment.

Tara Mutual argues the district court erred by granting summary judgment in Bartell's favor on his contract-reformation claim. Contract reformation "is an equitable remedy that is available when a party seeks to alter or amend language in a contract so that the contract reflects the parties' true intent when they entered into the contract." *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 864 (Minn. 2011). An appellate court reviews equitable determinations for an abuse of discretion. *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011). But "[t]he determination of whether a genuine issue of material fact exists is . . . subject to de novo review." *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 609 N.W.2d 868, 874 (Minn. 2000); *see also SCI*, 795 N.W.2d at 861 (noting that an appellate court "review[s] legal decisions on summary judgment under a de novo standard" and that this "standard of review does not change simply because the claims at issue are for equitable relief").

Tara Mutual argues that Bartell has not satisfied his burden of establishing that Donnelly agreed to insure the grain dryer. A party seeking contract reformation must prove that:

> (1) there was a valid agreement between the parties expressing their real intentions; (2) the written instrument failed to express the real intentions of the parties; and (3) this failure was due to a mutual mistake of the parties, or a unilateral mistake accompanied by fraud or inequitable conduct by the other party.

SCI, 795 N.W.2d at 865 (quotation omitted). These elements must be established through "evidence which is clear and consistent, unequivocal and convincing." *Id.* (quotation

omitted). The party seeking reformation bears an "onerous" burden. *Tollefson v. Am. Fam. Ins. Co.*, 226 N.W.2d 280, 284 (Minn. 1974).

Tara Mutual argues the district court erred by granting Bartell's claim for contract reformation for a mutual mistake of the parties because there are material facts in dispute and the district court improperly construed these facts in Bartell's favor.

We agree. In granting Bartell's contract-reformation claim, the district court determined that:

> While the memories of the participants are not clear as to the order of events or the exact substance of the communications, there is certainty in both [the agent's] testimony and [Bartell's] testimony that a request for insurance was made, it was meant to include the dryer, and the intent of everyone was to bind insurance for the dryer in June of 2017 . . . . Despite the muddled memories evident in the depositions, this is a clear-cut case of mutual mistake.

Based on our review of the record, we conclude there are material facts in dispute and the district court erred by weighing and resolving the conflicting testimony and construing disputed facts in Bartell's favor. In March 2017, Bartell provided the agent with an appraisal document for the items he wanted insured. Bartell stated he told the agent he "wanted coverage for everything listed which included the house, the machine sheds, grain bins, grain legs, and the [grain dryer]." Bartell claims he and the agent "intended and agreed that she would bind coverage for the [grain dryer] which was listed in the inventory/appraisal."

Yet in his deposition Bartell testified that he could "not recall" whether, or when, he asked the agent to insure the grain dryer. During his deposition, Bartell stated that he

sat down with the agent and "discussed the items[,] [or] at least the relevant pages." Counsel for Tara Mutual asked Bartell if he remembered telling the agent, "I have a 2009 grain dryer and it needs to be insured." Bartell responded, "I don't recall." Bartell later stated, "I can tell you we sat down and went through the inventory, but I don't recall exactly how specific we got with each item on the inventory." Tara Mutual's counsel inquired, "Okay. So, when you sit here today, you don't know whether you were specific with, 'Yes I need the 2009 grain dryer insured?'" Bartell responded, "I believe I was, but I—I just don't recall how specific or what date that we discussed these things."

Counsel also asked the agent about her recollection of speaking with Bartell in 2017 about insuring the farm and its equipment. The agent recalled meeting with Bartell in March 2017 and receiving an appraisal report. The agent stated she did not "sit down and go through each item" on the appraisal report with Bartell, although she explained that the document was meant to verify "that everything was on [the policy] the way [Bartell] wanted as per the appraisal." The agent remembered meeting with Bartell "when he first was going to get the equipment" and Bartell gave her "an idea what he would be getting." The agent could not recall specifically if Bartell highlighted that he wanted to have the grain dryer insured. In June 2017, the agent sent a letter to Tara Mutual attaching a "Delaware policy" to Bartell's policy. The grain dryer was not identified in that policy. The agent could not recall how she acquired the Delaware policy.

Bartell argues that this deposition testimony does not create a factual dispute over the parties' actual agreement. Bartell argues that "[t]he fact that the parties cannot recall specific discussions regarding individual items does not . . . establish that there was no

understanding, intent and agreement to insure all of the property." We are not persuaded. The affidavit and the deposition testimony are contradictory and create genuine issues of material fact as to whether Bartell requested to have the grain dryer insured, and when he communicated this request to the agent. The record does not contain "evidence which is clear and consistent, unequivocal and convincing" that Bartell and the agent agreed to insure the grain dryer. *SCI*, 795 N.W.2d at 865 (quotation omitted). The district court acknowledged in its summary-judgment order that the participants' memories were "muddled," but still found a "clear-cut case of mutual mistake." Generally, "[a]ny doubt as to whether issues of material fact exist is resolved in favor of the party against whom summary judgment was granted." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

Taken together, we determine that Bartell has not satisfied the "onerous burden" of showing he is entitled to reformation of the insurance contract at the summary-judgment stage. Tara Mutual raised genuine issues of material fact on the third element required for reformation—whether the failure to include the grain dryer on the insurance policy was based on a mutual mistake of the parties. Given Minnesota caselaw precluding a district court from resolving factual disputes at the summary-judgment stage, we conclude the district court erred, and we reverse and remand.[1]

[1] Tara Mutual also argues that Bartell had a chance to correct the error and failed to do so, and that the 2018 policy created a new contract distinct from the 2017 policy. Because we determine the district court erred by construing material facts in Bartell's favor, we do not consider these alternative bases for reversal.

II. The district court did not err in denying Tara Mutual's motion for summary judgment against Bartell.

Tara Mutual argues it is entitled to summary judgment because there is not clear and unequivocal evidence that Bartell and Donnelly agreed to bind coverage for the grain dryer. As discussed above, on the one hand, Bartell is not entitled to summary judgment because there are material facts in dispute on the formation of the contract. And on the other hand, Bartell presented sufficiently probative evidence on the issue of mutual mistake to withstand Tara Mutual's motion for summary judgment.

To establish a genuine issue of material fact, the nonmoving party cannot rely on "mere averments." *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 172 (Minn. 2021) (quotation omitted). Instead, the nonmoving party must present evidence that is "sufficiently probative" of an essential element of a claim to allow reasonable persons to reach different conclusions about the facts in dispute. *McIntosh Cnty. Bank v. Dorsey & Whitney, LLP*, 745 N.W.2d 538, 545 (Minn. 2008) (quotation omitted). Bartell presented evidence from which a fact-finder could conclude that the parties intended to provide insurance coverage for the grain dryer. Bartell and the agent testified about the substance of their conversations about Bartell's insurance needs. As the district court noted, Bartell and the agent's memories were "not clear as to the order of events or the exact substance of the communications." It will be for the fact-finder, and not this court, to resolve any conflicting testimony or credibility issues. *See Tolzmann v. McCombs-Knutson Assocs.*, 447 N.W.2d 196, 198 (Minn. 1989) ("[T]he assessment of witness[] credibility is the unique function of the trier of fact.").

Given these factual disputes, the district court did not err in denying Tara Mutual's summary-judgment motion, and we affirm this portion of the district court's order.

III. The district court erred in granting Donnelly's motion for summary judgment.

Tara Mutual argues the district court erred in granting summary judgment in Donnelly's favor because the agency contract required Donnelly to indemnify and hold Tara Mutual harmless for its damages, and because there are material facts in dispute.

Applicability of* Julien *Principle. Donnelly claims it is entitled to summary judgment because the *Julien* principle precludes Tara Mutual from recovering its losses. Under this principle, an insurer is not entitled to indemnity for an agent's negligence unless such negligence has increased the insurer's risk of loss. *Julien v. Spring Lake Park Agency Inc.*, 166 N.W.2d 355, 357 (Minn. 1969). An agent's negligence does not increase the insurer's risk of loss where the insurer was willing to insure the risk. *Id*. Thus, an insurer does not have a right to common-law indemnity from its agent if the agent was acting within the scope of its authority when binding the insurer and the insurer would have issued the policy regardless of the error. *See id*. The supreme court reaffirmed the *Julien* principle in *Norby v. Bankers Life Co. of Des Moines*, 231 N.W.2d 665 (Minn. 1975). *Norby* held that an insurer is not entitled to indemnity where an insurance policy "would have been written had the information been promptly transmitted, no investigation being necessary before the acceptance of an oral binder." *Id*. at 671. *Norby* concluded that "since the insurer was not prejudiced by the agent's failure to advise it of the risk incurred, the insurer could not recover from the negligent agent." *Id*.

Here, the district court found *Julien* controlling and determined that Tara Mutual could not recover from Donnelly because Tara Mutual did not sustain a recognizable loss. The district court determined that Tara Mutual "suffered no damage by Donnelly's failure to advise Tara [Mutual] of the binder extended for the grain dryer." The district court reasoned that

> [h]ere, the grain dryer is not considered a prohibited risk, rather it is the type of property insured by Tara [Mutual] and for which Donnelly was permitted to extend binders. . . . As the property was not prohibited, and insurance would have been extended had the paperwork been properly transmitted, Tara [Mutual] is unable to demonstrate a loss in this situation.

Based on these findings, the district court granted Donnelly's summary-judgment motion against Tara Mutual and dismissed Donnelly from the case.

The district court erred by relying on the *Julien* line of cases. We review issues involving the application of caselaw de novo. *Collins v. Minn. Sch. of Bus., Inc.*, 655 N.W.2d 320, 329 (Minn. 2003). *Julien* concerned a plaintiff asserting claims for *common-law* indemnity. 166 N.W.2d at 357. Here, the parties entered into contractual relationships. Parties to a contract "are generally free to allocate rights, duties, and risks." *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 545 (Minn. 2014). Further, "parties are free to contract to whatever terms they agree, provided that those terms are not prohibited by law." *Persigehl v. Ridgebrook Invs. Ltd. P'ship*, 858 N.W.2d 824, 832 (Minn. App. 2015).

Tara Mutual and Donnelly had an agency contract setting forth the parties' rights and obligations. Tara Mutual is authorized "to reject applications and to restrict or cancel

the coverage of any policy or part thereof." Tara Mutual requires Donnelly to submit copies of policies within three business days. Finally, Donnelly agreed to hold Tara Mutual "harmless" and "be liable to reimburse [Tara Mutual] for any loss, expense o[r] damage sustained by reason of any violation of the provisions" of the agency contract. This agency contract precludes common-law, general agency principles. *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515-16 (Minn. 1997) (holding that a clear and definite indemnity clause in a written contract waives a party's right to common-law indemnity). Thus, *Julien* is inapplicable.

Donnelly claims that *Julien* applies because "[t]he existence of a written [agency contract] does not change the requirement that Tara Mutual show causation as part of its claim for indemnification." We are not persuaded. *Julien*'s common-law indemnity principles do not apply to cases such as this when the parties' relationship is governed by a written contract. *See Art Goebel, Inc.*, 567 N.W.2d at 515-16. Donnelly agreed to reimburse Tara Mutual for any losses, including "any . . . expense [or] damage sustained" through a breach of the agreement. Because the parties agreed to incorporate indemnification and hold-harmless clauses into their agency contract, we do not consider *Julien* persuasive.

Litigation Expenses. Tara Mutual and Donnelly also disagree about whether the term "loss" includes Tara Mutual's litigation expenses. Generally, a party who indemnifies another may be responsible for attorney fees incurred by the indemnitee in defending against an action. *Seifert v. Regents of Univ. of Minn.*, 505 N.W.2d 83, 86 (Minn. App. 1993), *rev. denied* (Minn. Oct. 28, 1993). Tara Mutual argues that Donnelly must

reimburse Tara Mutual for its fees and costs. But the agency contract does not specify whether attorney fees, costs, or litigation expenses qualify as a "loss, expense o[r] damage sustained." Because there are genuine issues of material fact on the inclusion of Tara Mutual's litigation expenses, summary judgment is inappropriate.

Prohibited Risk. There are also factual questions outstanding as to whether the grain dryer was a prohibited risk. *Norby* provides that an insurer may not recover from a negligent agent unless such negligence increased the insurer's risk of loss. 231 N.W.2d at 671. An agent's negligence does not increase the insurer's risk of loss where the insurer was willing to insure the risk. *Id*. This applies when it is "undisputed that the policy would have been written had the information been promptly transmitted" and where "no investigation [is] necessary before the acceptance of an oral binder." *Id*.

Here, the parties dispute whether Tara Mutual would have insured the grain dryer and whether an investigation was necessary. The district court found that "the grain dryer is not considered a prohibited risk" and that Tara Mutual would have extended coverage "had the paperwork been properly transmitted." But the record shows that these factual questions cannot be resolved at the summary-judgment stage. Tara Mutual agrees that Donnelly may bind insurance "for the class of risks represented by that which was obtained for [Bartell]." Tara Mutual previously provided fire insurance for grain dryers in Minnesota. Tara Mutual's manager agreed that nothing about grain dryers, in general, make them an unacceptable risk. But Tara Mutual argues that its coverage is "subject to inspection and underwriting" and that it did not determine that Bartell's grain dryer, in particular, was an acceptable risk. Tara Mutual did not inspect the grain dryer before

Donnelly agreed to insure it. In response, Donnelly argues that Tara Mutual did not have written or informal policies requiring inspections, and only rarely performed such inspections. There is conflicting evidence in the record about whether Bartell's grain dryer was a prohibited risk and the district court erred by construing these disputed facts in Donnelly's favor.

In sum, we conclude the district court erred by rejecting the parties' hold-harmless and indemnification clauses in favor of the common-law *Julien* principle. In addition, there are genuine issues of material fact about Tara Mutual's losses and whether the grain dryer was a prohibited risk. Mindful of the standard of review, which requires us to view the evidence in the light most favorable to the nonmoving party, we conclude that summary judgment is inappropriate. We therefore reverse and remand the district court's grant of summary judgment in Donnelly's favor and against Tara Mutual.

Affirmed in part, reversed in part, and remanded.