This opinion is nonprecedential except as provided by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
A22-0081

Goldmount Veterinary Center, P.A.,
Respondent,

vs.

Watonwan County,
Defendant,

Animal Humane Society,
Appellant.

Filed June 27, 2022
Affirmed
Worke, Judge

Martin County District Court
File No. 46-CV-29-1224

Cory A. Genelin, Jonathan M. Janssen, Gislason & Hunter LLP, Mankato, Minnesota (for respondent)

Katherine B. Freitag, Bloomquist Law Firm, LLC, Park Rapids, Minnesota; and

Karen R. Cole, Law Firm of Karen Cole, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this appeal from a jury's verdict awarding respondent Goldmount Veterinary Center $1,498,375 in contract damages, appellant Animal Humane Society (AHS) argues that the award is unsupported by the evidence presented at trial. In the alternative, AHS argues that the district court erred by denying its posttrial remittitur motion and motion for a new trial. We affirm.

FACTS

These facts were established at trial and are presented in the light most favorable to the jury verdict. *See Navarre v. S. Wash. Cnty. Sch.*, 652 N.W.2d 9, 21 (Minn. 2002). On June 21, 2018, Watonwan County asked AHS to assist with an investigation into a herd of 72 miniature horses owned by Michael Johnson. When AHS agent Keith Streff arrived at Johnson's farm, he observed terrible conditions, including skeleton remains left in the horses' paddock. Streff told Johnson that day that the horses were "thousands of dollars away from being sound."

Watonwan County and AHS representatives obtained a warrant to seize the horses. Ultimately, the warrant was not executed because Johnson voluntarily surrendered his horses with a custodial release. While Johnson was considering whether to voluntarily surrender his horses, Streff told him that the care necessary to rehabilitate the horses would be very expensive and that AHS would pay for "the care and . . . keeping and maintaining" of the horses. This included paying for the costs of farrier services and "any veterinary treatment necessary to stabilize [the horses'] health and welfare." If the warrant was

executed, Johnson was informed by Streff that Johnson would bear all the costs of rehabilitating the horses. Johnson understood Streff to mean that, if he surrendered his horses, AHS "would cover all the costs. That it wouldn't cost me anything if I surrendered 'em to him."

Johnson agreed to voluntarily surrender his horses only if the horses were transferred to Goldmount—a veterinary clinic owned and operated by Dr. Shirley Kittleson. AHS became the owners of the horses when Johnson surrendered them. AHS transported the 72 horses to Goldmount on June 22, 2018.[1]

When AHS delivered the horses to Goldmount, Streff told Kittleson that AHS would provide payment for "general animal husbandry" and forensic reports of each horse to aid in the criminal prosecution against Johnson.[2] Kittleson understood "general animal husbandry" to mean the horses' boarding costs, as well as the specialized care needed to stabilize the horses. Streff understood that term to mean paying for the stabilization of the horses, but not general boarding costs. An expert at trial estimated that stabilization of the horses should take between four and six weeks, and Kittleson completed the initial farrier work to stabilize the horses by August 2018. The parties did not discuss the fee Goldmount would charge for the care of the horses, and the parties did not sign a written agreement.

In mid-July 2018, Goldmount sent Watonwan County an invoice for $43,037.20. The invoice included fees for hospitalization and "veterinary care," which Streff construed

[1] One of the horses died a few days later.
[2] Watonwan County successfully prosecuted Johnson for misdemeanor neglect of animals and misdemeanor animal cruelty.

to mean boarding costs. The boarding costs totaled $25 per horse per day. On July 24, Streff and a representative from Watonwan County visited Kittleson to contest the invoice and told Kittleson that the boarding costs were outside the scope of their agreement. That day, Streff told Kittleson that AHS would pay for "vet treatment, related medical costs, forensic reports and farrier care" and that any boarding costs "were to be worked out between her and Michael Johnson." Streff offered to take the horses to an alternative site while the parties disputed the costs. The parties did not agree on the boarding costs.

Kittleson and Streff spoke again on the phone on August 10. In her notes from the call, Kittleson wrote that Streff stated that Kittleson could recover the boarding costs through "sales and adoption fees." At a meeting three days later, Streff again told Kittleson that AHS would not cover boarding costs and offered to Kittleson that he would transfer ownership of the horses to her. According to Streff's notes from this meeting, Kittleson stated that she would not release any reports, photos, documents, or horses until AHS paid the boarding costs.

On August 20, Kittleson sent a second bill to AHS and Watonwan County for $65,080. The bill included fees for boarding and farrier services but not the forensic evaluations or veterinary care. The same day, the Watonwan County Attorney sent Kittleson a letter warning her that the horses were evidence in the criminal proceeding against Johnson and that Kittleson would be criminally investigated if she released them without prior approval by AHS. The county attorney testified at trial that he "foresaw as a consequence of [the letter] that [Kittleson] would continue to board, feed, and water the

horses" and that a reasonable person in Kittleson's position would continue to board the horses.

On September 14, Streff offered Kittleson two choices. Either AHS would take the horses back to be placed at a sanctuary while the dispute over fees continued, or Kittleson could own the horses and be repaid by the horses' adoption fees or sale price. Kittleson rejected both options. In response, Streff declared that Kittleson owned the horses and that she will now have to provide care to the horses indefinitely, and that, if Kittleson wanted to be paid for boarding costs, she needed to sue AHS.[3]

On September 17, 2018, Kittleson sent a third invoice for $49,700 for hospitalization fees. Two days later, the Watonwan County Attorney sent Kittleson a letter stating that the horses were no longer evidence in the criminal matter against Johnson and that she "may do with them what [she] see[s] fit." Kittleson was also told to submit a restitution claim for the boarding costs against Johnson. Kittleson never filed a claim. Kittleson sued Watonwan County and AHS for breach of contract in December 2019.

Kittleson continued to bill AHS $25 per horse per day for boarding up to trial, totaling $2,377,091.58. AHS did not pay this amount.[4]

After a three-day trial, the jury found in a special verdict that AHS and Watonwan County were responsible for the boarding and hospitalization costs for the horses, at the

[3] Streff repeated this verbal release on September 19, 2018.

[4] In September 2019, AHS sent Kittleson a check for $5,350.86, which according to AHS, was "for the costs that Goldmount itemized and requested for farrier and veterinary costs." Kittleson never cashed this check.

rate of $25 per day per horse, from June 22, 2018, to October 13, 2020.[5] This constituted an award of $1,498,375.

AHS moved for a new trial, or alternatively, for remittitur. The district court denied both motions. This appeal followed.

DECISION

We first address AHS's appeal from the jury verdict and then address AHS's alternative arguments from the district court's denial of its motion for a new trial and remittitur.

I. The evidence supports the jury's verdict.

AHS argues that the jury's verdict should be reversed because it is not supported by the evidence presented at trial. Specifically, AHS argues that there was insufficient evidence to find that AHS contracted with Goldmount because the parties did not have a meeting of the minds over the contract's terms. Alternatively, AHS argues that, even assuming there was a contract, Goldmount failed to mitigate its damages. It is a "fundamental rule that jury verdicts are to be set aside only if manifestly contrary to the evidence viewed in a light most favorable to the verdict." *Ouellette by Ouellette v. Subak*, 391 N.W.2d 810, 817 (Minn. 1986). "A verdict will not be set aside unless the evidence against it is practically conclusive," *id.*, or "if no reasonable mind could find as did the jury." *Domtar, Inc. v. Niagara Fire Ins. Co.*, 563 N.W.2d 724, 734 (Minn. 1997).

[5] The parties stipulated that the contract damages were to end on October 13, 2020.

A. The jury's determination that AHS and Goldmount entered into a contract is supported by the evidence presented at trial.

AHS first argues that Goldmount failed to present evidence proving there was mutual assent to the essential elements of the purported contract. The "existence of a contract is primarily a question of fact to be determined . . . on the basis of the evidence presented and the surrounding circumstances." *Malmin v. Grabner*, 163 N.W.2d 39, 41 (Minn. 1968). We apply the same standards of proof in cases involving oral contracts as we do in cases involving written contracts. *See Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 627-28 (Minn. 2022). "A contract requires a meeting of the minds concerning its essential elements." *Minneapolis Cablesystems v. City of Minneapolis*, 299 N.W.2d 121, 122 (Minn. 1980). The phrase "meeting of the minds" does not "require a subjective mutual intent to agree on the same thing in the same sense." *Holt v. Swenson*, 90 N.W.2d 724, 728 (Minn. 1958). Instead, mutual assent may be based on "objective manifestations whereby one party by his words or by his conduct, or by both, leads the other party reasonably to assume that he assents to and accepts the terms of the other's offer." *Id.*

A contract must include an agreement as to its "essential elements." *SCI Minn. Funeral Servs. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 864 (Minn. 2011) (quotation omitted). "While contracts that are too vague or indefinite are void and unenforceable, it is not necessary that the parties agree on every possible point." *Vermillion State Bank*, 969 N.W.2d at 628 (quotation and citation omitted). Rather, the essential terms of the contract need only be ascertainable with reasonable certainty, keeping

in mind that the law does not favor voiding contracts because of indefiniteness. *Id.* This is especially true when there has been "extensive performance on the part of both parties." *Hill v. Okay Constr. Co.*, 252 N.W.2d 107, 114 (Minn. 1977).

AHS argues there was insufficient mutual assent for what it classifies as two essential terms of the contract: the boarding fee charged by Goldmount and the length of the contract. Both arguments are unpersuasive.

i. Goldmount's Boarding Fee

AHS argues that it never agreed to pay Goldmount for boarding services, only the care necessary to stabilize the horses. But there is evidence to support AHS contracting with Goldmount to pay boarding costs. First, and most persuasively, Streff testified that the "specific agreement" between AHS and Goldmount provided that AHS would pay for "forensic evaluations, veterinary treatment, and *whatever . . . care is necessary to stabilize the horses* for their health and welfare." (Emphasis added.) Kittleson testified that she interpreted this "specific agreement" to include the horses' general care, as well as the specialized care needed to stabilize the horses. A jury could reasonably find that the cost of boarding 71 horses is included in the care necessary to stabilize the horses. In addition, it is significant that Streff told Johnson that AHS would pay for "the care and . . . keeping and maintaining" of the horses if Johnson voluntarily released the horses. This testimony, along with Kittleson's testimony, supports the jury's reasonable conclusion that there was mutual assent between AHS and Goldmount about the payment of boarding fees.

The record shows that once Johnson relinquished the horses, AHS owned them. Thus, AHS was responsible for all costs incurred in keeping and caring for the horses.

Because AHS did not contract with another party for their care, the jury could also reasonably infer that AHS contracted with Goldmount to provide boarding for the horses as part of their general care.

AHS's arguments against this conclusion are unpersuasive. AHS first argues that, after it received the first invoice from Goldmount including boarding fees, it contested the charges. But by then the oral contract had been formed and any modification to that oral contract required mutual assent. *See Olson v. Penkert*, 90 N.W.2d 193, 203 (Minn. 1958) ("Parties can alter their contract by mutual consent, and this requires no new consideration, for it is merely the substitution of a new contract for the old one, and this is of itself a sufficient consideration for the new." (quotation omitted)). Kittleson did not agree to any modifications. Second, AHS argues that, even if it agreed to pay for boarding costs, it did not agree to pay $25 per day per horse in boarding costs. But Streff testified that, even though he did not know what Goldmount's fee would be, he agreed to pay it. A jury could reasonably find that AHS agreed to pay whatever fee Goldmount charged for similar work, which in this case was $25 per horse daily.

ii. Duration of the Contract

AHS next argues that there was no mutual assent as to the duration of its contract with Goldmount. It points to evidence showing that both parties understood that the horses would be released after Goldmount stabilized the horses and completed the relevant forensic work, or around six weeks. But at the time the parties entered into the oral contract, they agreed the contract would last until the horses were stabilized, or for around

two months. Thus, viewing the evidence in a light most favorable to the verdict, reasonable minds could find that there was a contract between AHS and Goldmount as the jury did.

B. There is sufficient evidence supporting the jury's determination that Goldmount reasonably mitigated its contract damages.

AHS next argues that there is no evidence supporting the jury's implicit determination that Goldmount reasonably mitigated its damages. "It is a well-settled principle of contract law that a nonbreaching party is duty-bound to use reasonable diligence to mitigate damages." *Deutz-Allis Credit Corp. v. Jensen*, 458 N.W.2d 163, 166 (Minn. App. 1990). Reasonableness is a question of fact left to the jury. *See Krause v. Union Match Co.*, 170 N.W. 848, 849 (Minn. 1919). While the nonbreaching party has an affirmative duty to mitigate damages, the breaching party bears the burden at trial of showing damages could have been reasonably mitigated. *Lanesboro Produce & Hatchery Co. v. Forthun*, 16 N.W.2d 326, 328 (Minn. 1944). If the nonbreaching party fails to mitigate its damages, it is not entitled to any damages that could have been avoided through reasonable mitigation. *Id.*

We agree with AHS that it sought to remove the horses from Goldmount's care many times once the dispute over fees arose. At the same time, one piece of evidence, the confusion over who owned the horses after Streff's "ultimatum," supports the jury's verdict. In September 2018, Streff gave Kittleson two options. Kittleson could either release the horses to AHS while the dispute over fees continued or Kittleson could own the horses and recover her charges through sale and adoption fees. Kittleson rejected both options. Following this exchange, AHS and Goldmount disagreed on who owned the

horses. Kittleson believed that AHS owned the horses, while AHS believed that it had released the horses to Kittleson and that she owned them. It would be reasonable for the jury to conclude that Kittleson, because she thought AHS owned the horses, believed that she could not move them without AHS's consent. And because AHS believed that Kittleson owned the horses, it stopped communicating with Kittleson about the horses' care. As a result, a jury could reasonably conclude that Kittleson needed to keep caring for the horses (and charging her boarding fee) and had no reasonable option to further mitigate her damages while the parties litigated the fee dispute.

Because evidence supports the jury's verdict, the district court did not abuse its discretion by denying AHS's posttrial motion to reverse the judgment.

II. The district court did not err by denying AHS's posttrial motions for a new trial or remittitur.

AHS alternatively argues that the district court abused its discretion by denying its posttrial motions for a new trial or remittitur.

We first address AHS's motion for a new trial. "We review a district court's decision to grant or deny a new trial for an abuse of discretion." *See Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). The mere possibility that empaneling another jury and conducting new trial would bring about an opposite result is insufficient grounds for a new trial. *See Heggstad v. Dubke*, 229 N.W.2d 34, 36 (Minn. 1975). AHS reiterates here its argument that it did not contract with Goldmount to pay boarding fees. For the same reasons as above, the district court did not abuse its discretion when denying AHS's motion for a new trial based on this argument. Kittleson testified that her standard

fee was $25 per day per horse. And Streff testified that he agreed to pay Goldmount's fees. Streff knew that Goldmount was a for-profit business and knew that the horses were "thousands of dollars from being sound." Thus, the district court did not abuse its discretion by denying AHS's motion for a new trial or remittitur based on Goldmount's boarding fees.

AHS also moved the district court to reduce the jury's damage award. We will not reverse a district court's denial of remittitur unless there was a clear abuse of discretion. *Myers v. Hearth Techs., Inc.*, 621 N.W.2d 787, 792 (Minn. App. 2001), *rev. denied* (Minn. Mar. 13, 2001). The district court has wide discretion "in determining if damages are excessive and whether the cure is a remittitur or a new trial." *Hanson v. Chicago, Rock Island & Pac. R.R. Co.*, 345 N.W.2d 736, 739 (Minn. 1984). The purpose of remittitur is "to avoid the delay and expense of an appeal or a new trial." *Jangula v. Klocek*, 170 N.W.2d 587, 593 (Minn. 1969) (quotation omitted).

AHS argues the jury improperly calculated Goldmount's damages in three ways, but none are persuasive. First, AHS argues that the jury improperly awarded Goldmount damages to the date to which the parties stipulated damages must end. The jury's damage award is supported by the evidence presented at trial. At the time of trial, Kittleson possessed the horses and was incurring damages because of unpaid boarding costs. The jury also implicitly rejected AHS's argument that Streff released ownership of the horses to Kittleson in September 2018. Thus, the jury reasonably awarded Kittleson damages through the stipulated end date of October 13, 2020.

Second, AHS argues that the district court applied the incorrect mitigation standard when evaluating its argument that Goldmount's damages award should be remitted. While AHS is correct that the district court improperly stated that it, as the breaching party, had a duty to mitigate its damages, *Deutz-Allis Credit Corp.*, 458 N.W.2d at 166, that error does not impact our decision. As explained above, there is evidence that Goldmount reasonably mitigated its damages. After Streff gave Kittleson two options and Kittleson rejected both, AHS and Goldmount disagreed on who owned the horses. It was reasonable for the jury to conclude that, because Kittleson thought AHS owned the horses, that she could not move them without AHS's consent and thus was unable to further reasonably mitigate her damages.

Finally, AHS argues that the jury's damages award is not "logical." But the likely assumptions underpinning the jury's damages award are supported by the evidence. First, AHS argues that the jury needed to assume that it and Goldmount contracted for an indefinite period. But the jury did not need to make that assumption when determining damages. While the parties originally contracted for Goldmount to provide "general animal husbandry" and forensic reports on the horses, once the dispute over boarding fees began, Goldmount continued to care for the horses, meaning it incurred contract damages while AHS disputed the costs. Thus, it was reasonable for the jury to assume that Goldmount continued accruing damages through the stipulated end date of October 13, 2020. AHS next argues that, if the jury did not assume that the contract was for an indefinite period, which is likely the case, then the contract needed to have an end date. We find this argument unpersuasive because any conjecture on what the jury did or did not

assume when calculating damages is not particular enough to warrant remittitur. *See Perry v. Reuter*, 38 N.W.2d 60, 62 (Minn. 1949) (stating that a party arguing excessive damages must "point out in what particulars the verdict is excessive or was influenced by passion or prejudice").

Therefore, the district court did not abuse its discretion by denying AHS's posttrial motions for a new trial or remittitur.

Affirmed.